ONTARIO
LABOUR RELATIONS BOARD
REPORTS

March/April 2009

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A Bimonthly Series of Decisions from the Ontario Labour Relations Board

Cited [2009] OLRB REP. MARCH/APRIL

EDITORS: VOY STELMASZYNSKI
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CASES REPORTED

COURT PROCEEDINGS

SUBJECT INDEX

3799-05-R; 1870-06-R United Brotherhood of Carpenters and Joiners of America, Local 397, Applicant v. **714232 Ontario Ltd. o/a Pro Drywall, and Frontline Contracting Inc.**, Responding Parties; International Union of Painters and Allied Trades Local 1891, Applicant v. Multi Wall and Ceiling Systems Limited; 714232 Ontario Ltd. o/a Pro Drywall and Frontline Contracting Inc., Responding Parties.

Construction Industry – Sale of a Business – The issue before the Board was whether there was a sale or partial sale of a business of Pro Drywall ("Pro") to Frontline Contracting ("Frontline") – Shortly after Pro ceased operations, Frontline was incorporated by two previous employees of Pro – Frontline purchased certain assets from Pro including its operating premises – Additionally, the sole shareholder of Pro assisted in financing Frontline's operations and was employed by Frontline as an estimator – The Board determined that these events constituted the sale of a business under section 69 of the Act and that under section 69(2), Frontline was bound to the same collective agreements as Pro – Application under section 69 granted

BEFORE: *Mark J. Lewis*, Vice-Chair.

APPEARANCES: *Steven Bosnick* and *Ken Savoie* appearing for the United Brotherhood of Carpenters and Joiners of America, Local 397; *Craig Flood* and *John McNee* appearing for the International Union of Painters and Allied Trades Local 1891; *Michael Conradi* and *Rupert Jocher* appearing for Pro Drywall and Multi Wall; *David Cowling, Grant Cameron* and *Walter Salm* appearing for Frontline Contracting Inc.

DECISION OF THE BOARD: April 14, 2009

1. These matters are both applications under section 69 and subsection 1(4) of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act"). The applicant in Board File No. 3799-05-R is United Brotherhood of Carpenters and Joiners of America, Local 397 (the "Carpenters" and/or Local 397) and the responding parties are 714232 Ontario Ltd. o/a Pro Drywall ("Pro") and Frontline Contracting Inc. ("Frontline"). In Board File No. 1870-06-R the applicant is International Union of Painters and Allied Trades, Local 1891 (the "Painters" and/or Local 1891) and the responding parties are Multi Wall and Ceiling Systems Limited ("Multi"), Pro and Frontline.

2. Both of these applications concern the drywall industry, primarily, in and around the eastern portion of the Greater Toronto area. In Board File No. 3799-05-R, Pro is bound to certain collective agreements with the Carpenters and the Carpenters are seeking a declaration that Frontline is similarly bound. In Board File No. 1870-06-R, Multi is bound to a collective agreement with the Painters and the Painters are seeking a declaration that both Pro and Frontline are similarly bound. Because of the obvious overlap in the relevant evidence and the issues to be decided, these two applications were heard together.

The Facts

3. The hearings for these matters took place over a number of days and involved the parties calling a substantial amount of evidence, including entering as exhibits numerous documents amounting to many hundreds of pages of written materials. Despite this, the vast majority of the relevant facts concerning the history and continuing operations of these three companies were not

ultimately in dispute. However, what was very much in dispute was the conclusions that the Board should reach with respect to the relationships which existed, and/or continue to exist, between these companies and their respective principals.

4. Multi was started by Rupert Jocher in the early 1970's. Mr. Jocher was the owner, officer, director and principal employee of this company. Throughout its existence Multi performed plastering and drywall work, including taping, in both the residential and ICI sectors of the construction industry in and around Pickering and Oshawa. Initially, Multi had no employees, other than Mr. Jocher, but over time, and as the size of its jobs increased, it came to have between 10 and 12 men working for it. At some point in the early 1980's, Multi and/or Mr. Jocher himself (Mr. Jocher's evidence was somewhat unclear on this point) declared bankruptcy after the bank it/he used unexpectedly called-in a loan. According to Mr. Jocher, Multi has performed no work since the bankruptcy and, to the extent that it still exists, he has no interest in causing it to become active again as a contracting company in the construction industry.

5. At some point prior to the bankruptcy, probably in the mid-to-late seventies, Multi became unionized. Mr. Jocher could not remember exactly how and when the Carpenters acquired their bargaining rights with Multi but he did not dispute that they had done so at some point while this company was still active. With respect to the Painters, Mr. Jocher could not remember signing the voluntary recognition agreement relied upon by Local 1891 but he did not deny that it was his signature on this document. This voluntary recognition agreement was entered into by Local 1891 and Multi on September 20, 1978 and bound Multi to the terms and conditions of the then current collective agreement between Local 1891 and the Acoustic Association of Ontario and the Interior Systems Contractors Association.

6. Following the demise of Multi, Mr. Jocher continued to work in the drywall industry. As he candidly acknowledged in his evidence, despite the bankruptcy he still had to earn a living and plastering and drywall work was the only thing he really knew how to do. Initially he worked alone, primarily doing small, one off, jobs in existing houses and at some point he began using the name Pro Drywall for his work. As had occurred with Multi, overtime Mr. Jocher began taking on more work and doing larger jobs in both the residential and ICI sectors in and around the eastern portion of the GTA. This in turn necessitated the hiring of employees, the purchase of equipment, including at least one vehicle, and acquiring a facility to operate out of.

7. In April 1987, Mr. Jocher, while still continuing to use the name Pro Drywall, changed the structure of his business from a sole proprietorship to a corporation by establishing 714232 Ontario Ltd. Mr. Jocher and his wife, Irma Jocher, are both officers and directors of this company but Mr. Jocher testified that he was the sole shareholder. There is no question that it was Mr. Jocher who operated and controlled the business and that any actual involvement that Mrs. Jocher may have had with Pro was peripheral at best.

8. Thereafter, Mr. and Mrs. Jocher bought a unit in a commercial condominium development (essentially an industrial/commercial strip plaza) in Ajax. It was this facility, Unit 9 of 200 Fuller Road in Ajax, which Mr. Jocher came to use for Pro's operations. The front part of the unit consisted of Pro's offices while its storage and shop facilities were located at the back.

9. The rise of Pro apparently did not go unnoticed by the two unions. Although he was somewhat unclear about the precise details, Mr. Jocher testified that representatives of the Carpenters

advised him on a number of occasions that Pro was bound to the collective agreements that Multi had been bound to (or more precisely the successor agreements thereto) and owed substantial damages for it violations of those agreements. In 1999, the Carpenters filed a section 69 and subsection 1(4) application with the Board concerning Multi and Pro and referred a grievance concerning these two companies to arbitration pursuant to the provisions of section 133 of the Act (Board File Nos. 1520-99-R and 1523-99-G, respectively). The parties entered into Minutes of Settlement concerning these two applications which resulted in a Board decision dated July 27, 2000. Paragraph 3 of this decision states the following:

> 3. Having regard to the Memorandum of Agreement filed with the Board we hereby:
>
> (a) declare that Multi Wall & Ceiling Systems Limited and 714232 Ontario Ltd. o/a Pro Drywall Construction are bound to the collective agreements as between the Carpenters' Employer Bargaining Agency and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (C.D.C.) effective May 1, 1998 to April 30, 2001 and the Interior Systems Contractors Association of Ontario and Drywall Acoustic Lathing and Insulation Local 675 effective June 23, 1998 to April 30, 2001;
>
> (b) declare that, subject to paragraph (c) hereunder, Multi Wall & Ceiling Systems Limited and 714232 Ontario Ltd. o/a Pro Drywall Construction have agreed to abide by the full terms and conditions of the above-mentioned collective agreements;
>
> (c) declare that the Applicant has agreed that it will waive the application of the above-noted collective agreements by 714232 Ontario Ltd. o/a Pro Drywall Construction until May 30, 2000 and that thereafter, 714232 Ontario Ltd. o/a Pro Drywall Construction agrees to immediately apply and abide by the full terms and conditions of the above-noted collective agreements in respect of the performance of all work coming under the jurisdiction of the above noted collective agreements. We further declare that from the date of execution of the Memorandum of Agreement until May 30, 2000, and for a further period of one (1) month, thereafter, 714232 Ontario Ltd. o/a Pro Drywall Construction will forthwith provide the Applicant with a full and complete list of all projects on which it is performing work, as and when requested by the Applicant. A full and complete list of all projects on which 714232 Ontario Ltd. o/a Pro Drywall Construction is currently performing work is attached to the Memorandum of Agreement as Schedule "A";
>
> (d) order 714232 Ontario Ltd. o/a Pro Drywall Construction to notify the Applicant in writing before commencing any work which is not referred to in Schedule "A" prior to May 30, 2000;
>
> e) declare that Multi Wall & Ceiling Systems Limited and 714232 Ontario Ltd. o/a Pro Drywall Construction and Rupert Jocher are released and forever discharged from any and all actions, causes of action, claims, obligations, liabilities, complaints and demands of any nature or kind which the Applicant may have had, may now have or may come to have in relation to work performed by either Multi Wall & Ceiling Systems Limited or 714232 Ontario Ltd. o/a Pro Drywall Construction prior to May 30, 2000.

10. Mr. Jocher's evidence concerning the activities of the Painters was less clear. He claimed that on at least two or three occasions since the incorporation of Pro in 1987 a representative of the Painters had come to his office and inquired about the type and amount of work that Pro was doing. Mr. Jocher either never knew or could not remember the name of the union representative who had made these inquiries. The Painters called no evidence concerning this point. What is clear, however, is that the Painters took no formal action concerning Pro until they filed this application (Board File No. 1870-06-R) in September, 2006.

11. Mr. Jocher testified that, despite, or perhaps more correctly because of, the settlement he had made with the Carpenters, he never had any intention of continuing to operate Pro after May 30, 2000, the date on which the collective agreements would become effective. He stated that, in order to do *union work,* Pro would have to get a lot bigger and, given his age and his previous bad experience with bank financing with Multi, he had no interest in trying to operate a larger, unionized, company. He stated that he therefore, used the grace period which the settlement provided for in order to finish off all of Pro's jobs by the end of May 2000. Following this, Mr. Jocher claimed that he closed his company and essentially retired from the construction industry.

12. The shareholders, officers and directors of Frontline are Walter Salm and Grant Cameron. Both Mr. Salm and Mr. Cameron have known and worked with Mr. Jocher for a number of years. Mr. Cameron first began work in the construction industry when Mr. Jocher hired him to work for Pro in 1984. He continued to work for Pro until the end of May 2000. Mr. Salm testified that he worked for Mr. Jocher on a consistent basis for around twenty years prior to May 2000. Both men testified that while employed by Pro they had essentially always worked as carpenters, and more particularly carpenters in the drywall industry.

13. In the late spring of 2000, Mr. Salm and Mr. Cameron decided to go into business together as equal partners. They both testified that they had been thinking about doing this prior to the spring of 2000 but that they were ultimately galvanized into taking this step when Mr. Jocher advised them, along with all of the other employees of Pro that he was closing down his business. Thereafter, they caused Frontline to be incorporated in June 2000 and began looking for work. Prior to starting-up Frontline, and in addition to their regular work for Pro, both men had done some *side jobs* on their nights and weekends which apparently mostly involved small renovations for friends and acquaintances.

14. Mr. Cameron testified that initially Frontline's work came from contacts with clients and other contractors which he and Mr. Salm had developed as a result of their work for Pro. A review of the bids, contracts and invoices which were submitted into evidence indicates that Frontline's work is generally the same as the work which Pro had eventually come to perform, being essentially drywall and other carpentry work in the residential and ICI sectors of the construction industry, and mostly in the eastern portion of the GTA. Certainly Mr. Jocher's involvement in preparing bids for Frontline, which is outlined in more detail below, establishes that there was no great distinction in the work that the two companies performed.

15. From the very beginning, Frontline has been located at Unit 9, 200 Fuller Road in Ajax. In or about August 2000, Mr. Salm and Mr. Cameron purchased this unit from Mr. and Mrs. Jocher, however, Frontline had been operating out of this facility since it started-up in June. In fact, Frontline's Articles of Incorporation, which were filed with the Ministry of Consumer and Commercial Relations on June 2, 2000, list 200 Fuller Road, Unit 9, Ajax, as being the company's

address even though at that time there was no formal arrangement between Mr. Salm, Mr. Cameron and Mr. and Mrs. Jocher (or their respective companies) for Frontline to lease or buy this unit and it was not paying to use the space. When they did eventually come to buy the unit, the Jocher's provided Mr. Salm and Mr. Cameron with a vendor take back mortgage for 100% of the purchase price. This price was $180,000.00 which was exactly the same price that the Jochers paid for the property when they bought it in or around 1988.

16. There was a certain amount of dispute between the parties as to who did what for Frontline. What is clear however is that, with respect to the two owners, Mr. Cameron was generally responsible for running the office side of the business while Mr. Salm was generally responsible for running the jobs in the field. What is equally clear is that, at some point within the first two month of its start-up, Mr. Jocher began working for Frontline and that he continued to work for Frontline until at least some point in 2006.

17. Mr. Jocher's Frontline business card lists him as being an estimator for the company. Mr. Cameron testified that it was he, and/or possibly Mr. Salm, who ultimately determined what work Frontline bid on and the amounts which it quoted in its bids. However, even if one of the partners had to approve the final amount of any bid submitted, both the documentary and the oral evidence clearly establishes that in his approximate six years with the company Mr. Jocher ran take-offs, prepared bids, signed and submitted bids and liaised with customers and sub-trades in connection with Frontline's potential and actual bids, contracts and jobs. In this respect, Mr. Jocher testified that he was most likely to be involved with the bidding process, sign the bids, and to liaise with customers when Frontline was dealing with Pro's former customers. Further, given which company certain of the documents that were entered into evidence were addressed to and/or referenced, it is clear that at least some customers and suppliers were confused about whether they were dealing with Pro or Frontline in the immediate period following the end of May 2000. In addition, on at least a few occasions Mr. Jocher, at the behest of Frontline and/or client's of Frontline that he knew through Pro, submitted bids on behalf of Pro for jobs that Frontline was also bidding on. In such cases Pro's bids would always be higher than Frontline's and were not intended to be accepted. Instead Mr. Jocher submitted these bids so as to give the appearance that multiple bids had been received, a condition which some customers apparently required, prior to Frontline's bids being accepted.

18. In addition, the evidence also clearly established Mr. Jocher's unique financial position with respect to Frontline. Initially at least, he was paid a salary (by way of a payment from Frontline to Pro) which made him the highest paid employee of Frontline (including Mr. Salm and Mr. Cameron). However, and as distinct from the other Frontline employees, Mr. Jocher was often asked to hold-off in cashing his pay cheques until Frontline had sufficient funds in the bank to cover them.

19. When Frontline started Pro was listed as a credit reference on some of the trade credit applications which Mr. Salm and Mr. Cameron made. Further, Mr. Jocher and/or Pro repeatedly provided loans to, and/or made payments on behalf of, both Frontline and its owners. These transactions included providing the money to pay, or actually paying, for materials, subcontractors and various other expenses including the fees and taxes associated with the Fuller Road unit. When he provided these loans and made these payments, Mr. Jocher would get no interest and there was no specific schedule for him to be re-paid and reimbursed. As all of the witnesses acknowledged, Frontline was only able to carry on in business in the manner that it did (without a bank loan and/or a secured line of credit, for example) because of the *alternate financing* which Mr. Jocher provided. Further, the witnesses also acknowledged that Mr. Jocher could only receive his wages and be paid

back the money which he had loaned when Frontline had acquired sufficient amounts of money from its customers and this was obviously directly related to it securing, performing, and ultimately being paid for its, work. As a result, sometimes Mr. Jocher would have to wait months in order to cash his pay cheques and/or receive payments from Frontline.

20. Frontline took over the Fuller Road unit from Pro as it was. As such Frontline apparently inherited, and initially at least used, Pro's office furniture (although this was somewhat minimal), phones (although Frontline had its own phone number), fax machine and fax number and computer along with the software installed on it. Frontline also apparently inherited certain miscellaneous materials and equipment that Pro had stored at Fuller Road but, given that Mr. Salm and Mr. Cameron described what Pro left as *old junk* it is unclear what, if any, use Frontline made of these things. However, there is no question that when Frontline first started up Mr. Salm continued to use the same cube van that he had previously used for his work with Pro. This van was essentially gifted to the new company by Mr. Jocher.

21. Finally, in addition to Mr. Jocher, Mr. Salm and Mr. Cameron, there were some other common employees of Frontline and Pro. In particular, Pro's former office assistant, *Kirsten*, stayed on to work for Frontline. Her duties remained unchanged. For example, in the summer of 2000, when Pro continued to exist at least nominally, she would type documents, answer the phone and receive office deliveries and mail for both companies.

Decision

Multi Wall and Pro

22. Given the Minutes of Settlement, and the resulting Board decision, there is no need to deal with the relationship between Multi and Pro with respect to the Carpenters' bargaining rights. This issue is only of significance to the Painters' bargaining rights and their application, Board File No. 1870-06-R.

23. It was not, and it can not be, seriously disputed that there was a sale of a business, within the meaning of section 69 of the Act from Multi to Pro. The situation involving these two companies is a classic example of a *sale* having taken place based on the Board's *key man* doctrine as outlined in such cases as *Gallant Painting*, [1991] OLRB Rep. Sept. 1051 for example. Mr. Jocher *was* Multi in the sense that it only existed as a business, and could only continue to exist, as a result of his skills, abilities, experience, contacts and knowledge. Therefore, when he began working as Pro, this new entity had clearly secured for its own benefit the very core and essence of Multi. Simply put, without Mr. Jocher Multi could not exist as a meaningful business within the construction industry in the eastern portion of the GTA but because of Mr. Jocher Pro was not only able to exist but was able to grow as a business within the exact same industry.

24. Having found that there was a sale from Multi to Pro, the consequences under the Act are clear. Multi was bound to a collective agreement with the Painters and therefore, in accordance with the provisions of subsection 69(2), as soon as the sale took place, which in this case is the very moment when Mr. Jocher started Pro, Pro became so bound. Although hinted at in Mr. Jocher's testimony, there is no evidence on which to conclude that the Painters ever abandoned their bargaining rights with either Multi and/or Pro. In these circumstances, to the extent that the evidence concerning conversations between Mr. Jocher and a representative of the Painters thought to have

taken place at some point in the late 1980's is relevant at all, it is only relevant to the grievance which has been filed and not to the question of the Painters' bargaining rights, which is the subject of this application.

Pro and Frontline

25. Both Unions rely on section 69 of the Act to assert that Frontline is bound to collective agreements with them as a result of a *sale* from Pro to Frontline. Subsection 69(2) of the Act states:

> **69.** (2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.

26. Further, the Act itself offers specific instruction as to the meaning of relevant terms in that subsection 69(1) sets out the following definitions:

> **69.** (1) In this section,
>
> "business" includes a part or parts thereof;
>
> "sells" includes leases, transfers and any other manner of disposition, and "sold" and "sale" have corresponding meanings.

27. In this case there was obviously no formal sale of Pro to Frontline. At all material times, Pro not only continued to formally exist as a corporate entity but also continued to be owned exclusively by the Jochers. However, as the facts set out above clearly establish, from the moment of Frontlines' inception and continuing for years thereafter there were a great many links between the two companies and/or their principals. The unions argue that these links are more than sufficient to establish the sale of a business within the meaning of the Act. The companies, and in particular Frontline, argue that they are not.

28. All parties put a great many legal authorities before the Board but, other than establishing general principles with respect to this section of the Act, most of these authorities were not ultimately very relevant to this matter. In circumstances such as these, the determination of whether there has been a sale within the meaning of section 69 is one which is largely dependent upon the facts. On analysis, the facts of this case are quite unique.

29. In its argument, Frontline acknowledged that there had been a series of transactions and exchanges between it and Pro and Mr. Salm and Mr. Cameron and Mr. Jocher. Thereafter, it analysed these individual transactions and exchanges and asserted that, given the nature of the businesses involved, none of them could be found to be of sufficient importance, and/or have such a significant impact, so as to constitute the sale of all, or part, of Pro to Frontline. It argued that, at the most, all that had happened here was that Frontline had acquired some of Pro's assets (including the

services of some of its former employees) but that none of these assets were of sufficient importance to its existence and functioning as business so as to constitute a sale. For example, while it acknowledged that it operated out of the same location as Pro, its position was that what particular location a construction contractor, such as it and Pro, uses is of no significance to the *business* given that customers almost never come to the office and all of the meaningful work is performed on site rather than at the yard.

30. In a general sense I agree with Frontlines positions. The purpose of section 69 of the Act is protection of bargaining rights and not regulation of corporate structures or the ownership of real and intellectual property. Obviously then, and as the Board has repeatedly stated, a sale within the meaning of this section of the Act does not occur every time one construction company purchases the assets of another or every time a managerial employee switches employers. For example, in analyzing the Key Man doctrine the Board stated the following in *Tri-Corps Industrial Contractors* [1994] OLRB Rep. Oct 1446:

> 63. Thus it can be [sic] seen that not every movement of managerial personnel from one business to another will constitute a sale of a business within the meaning of section 64. In addition, the cases indicate that bargaining rights attached to a "business" and not to an individual. It is only where the key person is so identified with the "business" that it is realistic to view his/her movement to be a transfer of all or part of a "business" that a declaration pursuant to section 64 will be made. To hold otherwise would result in a "sale" whenever an expert, experienced manager, estimator, field supervisor or similar managerial personnel left the unionized company to join another. Within the construction industry it is not unusual to find persons who have obtained specific expertise or management knowledge experience, who have developed entrepreneurial skills, or who have otherwise acquired specialized abilities by reason of their employment history or association within the industry. It is inevitably these types of attributes which enable persons within the industry to either attract offers of employment from other companies or individuals, or which permit them to start up their own business enterprise either alone or in conjunction with others who may have similar or complimentary expertise, knowledge and skills. Certainly, in instances where a business has started from scratch (as is the assertion in the case before us) it is difficult to imagine anyone who does not have some experience, skill or expertise. A complete novice to the construction industry is not likely to start up his/her own business in the industry.

31. I also agree with many of propositions relied upon by Frontline concerning the critical importance, or more particularly the lack thereof, to its essence as an undertaking of many, if not most, of the individual elements and assets of Pro which Frontline came to acquire. For example, standing alone, the fact that Mr. Salm continued to use the same cube van, or the fact that Frontline's bids were typed on Pro's old computer by Pro's former office assistant, would be of relatively little significance. However, engaging in an analysis of individual elements in isolation is to *miss the forest for the trees* given that what is ultimately determinative in this situation is the importance and overall character of the totality of that which Frontline acquired from Pro. In this respect, the Board comments in *Accomodex Franchise Management Inc.*, [1993] OLRB Rep April 281 are particularly significant:

55. The instrumental approach to successorship suggests that bargaining rights are attached to an economic vehicle - the mechanism, resources or facilities by which the undertaking serves its purpose - rather than the purpose itself, the employees, or their work. Bargaining rights attach to the business undertaking. The Board then tries to determine, from a labour relations perspective, whether the transfer and continuation of some facet or facets of that undertaking, warrants a continuation of bargaining rights - for, of course, when interpreting section 64, the Board has to keep in mind its purpose and effect. The Board tries to reach a result which is fair to both the statute and the context under review - that is, a result that appears to be called for to remedy the mischief for which section 64 was passed. That mischief is not the loss of work or work opportunities, but rather the disruption of bargaining rights which would flow from a change in the ownership but continuation of all or part of the elements that make up the business.

56. As a result of section 64, bargaining rights are not coextensive with commercial ownership or the continuing identity of *the owner*, nor does it matter how the new owner comes to have possession of the instruments necessary to carry on all or part of the functions of the predecessor. Bargaining rights continue with a continuation of the business undertaking or a part of it. The cases explore just what those instruments or elements of the business are, and what can be said to be the essence of the undertaking – land, equipment, location, employee skills, licences, patents, etc. They consider from a labour relations perspective, whether a sufficiently-coherant grouping of those things has been transferred so as to warrant a continuation of bargaining rights.

57. Accordingly, in deciding whether there has been a sale of the predecessor's "business" for successor rights purposes, the Board has found it useful to consider the extent to which the various elements of the predecessor's business can be traced to the alleged successor - that is, whether there has been an apparent continuation of the predecessor's undertaking or organization, albeit with the change of owner. This "tracing" approach was considered by the Board in *Culverhouse Foods Limited*, [1976] OLRB Rep. Nov. 691 (application for judicial review dismissed January 18, 1979) where the Board listed some of the factors which might be significant in deciding if there had been a transfer of the predecessor's business:

> In each case the decisive question is whether or not there is a continuation of the business ... the cases offer a countless variety of factors which might assist the Board in its analysis; among other possibilities the presence or absence of the sale or actual transfer of goodwill, a logo or trademark, customer lists, accounts receivable, existing contracts, inventory, covenants not to compete, covenants to maintain a good name until closing or any other obligations to assist the successor in being able to effectively carry on the business may fruitfully be considered by the Board in deciding whether there is a continuation of the business. Additionally, the Board has found it helpful to look at whether or not a number of the same employees have continued to work for the successor and whether or not they are performing the same skills. The existence or non-existence of a hiatus in production as well as the service or lack of service of the customers of the predecessor have also been given weight. No list of significant considerations, however, could ever be complete; the number of variables with potential relevance is endless. It is of utmost importance to emphasize, however, that none of

> these possible considerations enjoys an independent life of its own; none will necessarily decide the matter. Each carries significance only to the extent that it aids the Board in deciding whether the nature of the business after the transfer is the same as it was before.
>
> 58. If many of the elements that made up the predecessor's business organization can be found in the hands of the successor, and are used for the same business purposes, there is an inference that there has been a transfer of a business to which section 64 applies. The more the transferee's ability to carry on his business is derived from or dependent upon things acquired from the proprietor of the predecessor business, the stronger the inference will be - particularly if the predecessor has ceased to carry on its business or has withdrawn from the relevant market. Continuity of the economic mechanism or vehicle points towards a "successorship" within the meaning of the Act - which is to say the application of a provision that results in a continuation of the institutionalized collective bargaining relationship. The issue before the Board, of course, remains whether there has been a transfer of a "business" or "part" of a business within the meaning of section 64; but it is much easier to make that finding, with the result that the collective bargaining relationship will be continued, if there is a substantial continuity of the other elements of the predecessor's business organization.

32. Prior to May 30, 2000, Pro was carrying on business as an active and viable drywall, carpentry, and small general, contractor in the residential and ICI sectors of the construction industry in the eastern portion of the GTA. It was able to do so by utilizing Mr. Jocher's reputation and contacts within the industry and amongst its customers, along with his knowledge, skill and ability in estimating jobs and preparing competitive bids. It had its own workforce of skilled tradesmen that it could rely on to perform the work which it secured. In carrying out its activities it used: the office and yard on Fuller Road which the Jochers owned; the services of an office assistant; some rudimentary office furniture and basic business machines such as the computer, telephone and fax; at least one van, and; some basic, if apparently quite old, construction equipment. Finally, it was able to function as a business in the way that it did because it and/or Mr. Jocher had sufficient money in the bank to purchase materials, meet the payroll and to pay any other bills which might arise while awaiting payment from its customers.

33. By way of contrast, prior to the beginning of June 2000, Frontline was nothing more than a concept of Mr. Salm and Mr. Cameron. It is true that both men, like a great many tradesmen, performed some private work when they were employed by Pro but neither man (nor the two of them together) had established their own contracting businesses in any meaningful or realistic way by May 2000. In fact the evidence made clear that Mr. Salm and Mr. Cameron had previously only thought about establishing their own business but that they did not actually do this until they found out that Pro was going out of business. It is of course possible that Mr. Salm and Mr. Cameron could have tried to start-up their own business without acquiring anything from Pro but since this is not what actually occurred there is no need to speculate whether or not they would have been successful. What actually occurred here is that, no more than two months following its start-up, Frontline was not only performing essentially the same work that Pro had performed, within the same general market, but it was doing so having acquired, and/or having at least acquired access to, every meaningful asset which Pro had previously used.

34. This acquisition of Pro's assets clearly started even prior to Frontline's active existence as a carpentry/general contractor. For example, there is simply no credible explanation as to why Mr. Salm and Mr. Cameron would use Unit 9, 200 Fuller Road, Ajax as the address for Frontline in the June 2nd Articles of Incorporation unless they believed they would be able to take over the Pro's building for the future use of their own company. Thereafter their efforts to obtain and perform work caused them to buy, borrow or simply take the business assets of Pro and use them for Frontline.

35. These various individual assets, such as an office, fax machine, telephones, a van, an office assistant, some skilled workers, the ability to get discounted materials etc., may seem insignificant but together they provided Mr. Salm and Mr. Cameron with the pre-assembled framework of a contracting business around which they could start Frontline. In this way this case is similar to *Janzen Plumbing & Heating Ltd.*, CanLII 3617 (ON L.R.B.) (February 7, 2006) in which the Board noted:

> 54. In the instant case, we have not only the use of equipment and the movement of employees, but also the transfer of every element of the business other than the owner. It is evident from the circumstances described that the business of JJP&H could not have been established without what was provided by PJH&P. The employer contends that inventory, vehicles and other tangible assets could have been obtained elsewhere but, it is difficult to envision how JJP&H could have set up such a complete and comprehensive operational unit without the financial benefits afforded to him and more importantly the structure of the business of PJP&H. That structure included business and individual contacts, the premises, the employees and the physical assets, including inventory, vehicles and equipment. The same type of work was performed generally in the same geographic area. A functional coherent business unit was transferred to JJP&H in its entirety. This transfer was more than a transfer of mere or incidental assets. It was a transfer of a business.

36. In addition to obtaining Pro's underlying framework, Frontline then acquired Pro's most important *asset* when it began employing and, in financial terms at the very least, depending upon Mr. Jocher for its continuing existence. All three witnesses, but especially Mr. Cameron, tried to minimize Mr. Jocher's role with Frontline. However, their claims concerning Mr. Jocher's lack of importance to the new company simply make no sense in all of the circumstance and on this point I do not find their testimony to be credible. In fact on the basis of the evidence which was presented, I find that Mr. Jocher played a hugely significant role in Frontline.

37. At a minimum, it was agreed that Mr. Jocher was brought into Frontline to run takeoffs and to prepare bids. Therefore, even if it is accepted that Mr. Cameron and/or Mr. Salm had the ultimate say in setting Frontline's final bid price, it simply cannot be concluded that Mr. Jocher's work was not of vital significance to Frontline's ability to obtain work and make a profit in this bid oriented industry. There was no evidence which established that Mr. Cameron would regularly or significantly question and/or override Mr. Jocher's preparatory work. For the bids Mr. Jocher worked on, Frontline was almost entirely dependant on his skill and ability as an estimator and I do not accept that these were limited to simply being able to read the blue prints and do the resulting *pro forma* calculations.

38. Quite clearly Mr. Jocher worked as an estimator for Frontline, just as he had for Pro, and, as the Board stated in *900311 Ontario Inc. c.o.b. as Marfran Construction*, CanLII 13280, (April 24, 2006) in this type of industry an estimators work is vital and is not simply *clerical* in nature:

> 10. I find this explanation by Marty Roy improbable. Even relatively straightforward construction work such as drywall, requires some expertise. If it were simply a matter of applying an arithmetic formula that anyone could deduce, the field would be considerably more crowded than it is. ...

39. Further, if, as Mr. Cameron and Mr. Salm would have the Board believe, Mr. Jocher was doing little more that *applying an arithmetic formula*, why was he hired at all? As both owners testified, and the evidence makes clear, in the summer of 2000 Frontline was struggling to obtain work and had significant cash flow problems. Such circumstances are hardly conducive to, or consistent with, Mr. Cameron and Mr. Salm hiring an employee (Mr. Jocher) to perform work which they claimed they could do, and were in fact doing, themselves, and agreeing to pay that employee a salary (rather than an hourly rate) which made him the highest paid employee of the company. This is especially the case given that, at the time they hired him, they knew, or at least must have strongly suspected, that Frontline didn't have the money to pay Mr. Jocher.

40. The only logical explanation for what occurred here is that Mr. Jocher became part of Frontline because he was needed if this company was going to survive and/or grow. As noted above, in the summer of 2000 and thereafter, it was aggressively trying to get work, including work from Pro's former customers. In such circumstances, it is obvious that Frontline would have utilized Mr. Jocher's knowledge, skills, contacts, and reputation within exactly the same market of the exactly the same industry, which he had obtained and used in his more than twenty year history of running his own companies.

41. This finding, concerning Mr. Jocher's role within, and importance to, Frontline is also completely consistent with the fact that Mr. Jocher had a Frontline business card which in effect announced to the industry that he, who had previously been the embodiment of Pro, was now part of Frontline. Further, this finding is also completely consistent with the evidence that Mr. Jocher specifically and intentionally became personally involved with Frontline's work for Pro's former customers. In this respect it is also of particular significance that he had such a good reputation with some of these customers that they were prepared to accept, and perhaps even solicit, *dummy bids* from Pro in order to award Frontline work.

42. Finally, I find that Frontline obtained a particularly important and significant *asset* from Pro when it secured the same means of finance that Pro had previously had, namely Mr. Jocher. As noted above Mr. Jocher had always tried to finance Pro with his own money because he was wary of bank financing after what had happened with Multi. Mr. Cameron and Mr. Salm both acknowledged that the initial costs for Frontline had been more than they had expected and more than they could personally afford. However, in order to meet these unexpected costs, they didn't go to a bank but instead relied upon Mr. Jocher. For months, (and possibly as much as its entire first year) Mr. Jocher financed Frontline, by providing it with money, more or less whenever it was needed and by working without being regularly paid, while obtaining no security, receiving no interest on the amounts due to him and without any fixed repayment dates even being established, yet alone met. Quite simply it cannot be said that such arrangements are normal in the construction industry and could have been obtained by Frontline anywhere else had Mr. Jocher not been brought in.

43. As the Board's jurisprudence makes clear, the particular elements and instruments of a business which are essential to its essence as an undertaking vary on a case by case basis and may be hard to isolate. This is especially true with small businesses in the construction industry for which there are often relatively few tangible assets. However, all businesses must have an essence of some sort and what ever the essence of Pro may have been, it is quite clear that in these circumstances that essence was acquired by Frontline given that Frontline acquired all of the individual elements of Pro.

44. Had Frontline simply acquired certain limited and distinct elements of Pro it might be possible to conclude that Pro's essence as an undertaking had not in fact transferred and this would especially be the case if Pro had continued to carry on in business. For example, had Mr. Salm and Mr. Cameron simply taken over the Fuller Road building from Pro one could conclude that what was transferred was not essential to either entity. The same argument could be made if Frontline had simply received work from some of Pro's former customers and/or hired some of Pro's former employees. This might have even been the case had Frontline only hired Mr. Jocher himself, particularly if his role with the new company was actually as limited as they tried to claim it was. Likewise, had the financial arrangements between Frontline, Cameron and Salm, on the one hand, and Pro and the Jochers, on the other, been limited to simply lending money, on an arms length basis, to enable the new company to get started, it would not be obvious that Frontline had acquired an essential element of Pro. However, here the interchange between the two entities was not limited but was total and absolute. It is in fact hard to imagine what more Mr. Salm and Mr. Cameron would have acquired had they simply purchased Pro directly. What occurred here was the whole-sale *de facto* absorption of Pro by Frontline very much to the detriment of the bargaining rights held by, and/or claimed by, these two unions given that Frontline always operated as a non-union employer.

45. Accordingly, and for all the reasons noted above, I find that there was a transfer of, at the very least, a part of a business from Pro to Frontline and as such there was sale of a business from Pro to Frontline under section 69 of the Act. Therefore, I further find that, pursuant to the provisions of subsection 69(2) of the Act, Frontline is bound to the same collective agreements as Pro.

46. In view of my finding noted above, I find it unnecessary to consider the applicants' applications under subsection 1(4) of the Act.

0660-08-R; 2081-08-U International Brotherhood of Electrical Workers, Local 353, Applicant v. **Aerostar Electrical Services Inc.**, Responding Party

Certification – Construction Industry – Unfair Labour Practice – Following a Regional Certification Meeting, in what began as a card-based application for certification, the parties entered into Minutes of Settlement in which they agreed to hold a representation vote of eligible individuals – The union complained that during the period between the application date and the vote, the employer had unilaterally given various wage increases to a number of employees – The Board rejected the employer's argument that it had historically provided such raises to employees – The wage increases were found to violate the freeze provisions (s. 86(2)) and to constitute undue influence contrary to ss. 70 and 72 – The Board held that this was not a situation where the results of the vote suggested that the union had lost significant support between the application filing date and the date of the vote – There were no threats to job

security and no terminations of union supporters, so the appropriate remedy was to direct a second representation vote – Second vote ordered

BEFORE: *Susan Serena*, Vice-Chair.

APPEARANCES: *E. Schirru* and *Tony Chiappetta* appeared for the applicant; *J. Paul Wearing* and *Paul Petten* appeared for the responding party.

DECISION OF THE BOARD; March 4, 2009

1. Board File No. 0660-08-R is an application for certification filed by the International Brotherhood of Electrical Workers, Local 353 ("the union") on May 23, 2008 that the applicant elected to have dealt with under section 128.1 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). Following the Regional Certification Meeting this application was scheduled for hearing to resolve the outstanding status disputes. Prior to that hearing commencing, the parties entered into Minutes of Settlement on September 29, 2008 in which they agreed on the nine individuals who were eligible to participate in the representation vote the Board was to conduct on October 8, 2008. The union lost the representation vote 6 to 3.

2. On October 8, 2008 the union filed an application under section 96 of the Act (Board File No. 2081-08-U). In this application the union alleges that at its meeting with the workers on October 6, 2008 it learned that since May 2008 the responding party, Aerostar Electrical Services Inc., ("Aerostar" or "the company") had been contravening sections 70, 72, 76 and 86 of the Act by giving a number of the individuals who were eligible to vote "raises in excess of $10 per hour and [the company] was now permitting certain employees to use company vehicles for the purpose of travelling back and forth from home to work".

3. This decision deals with whether Aerostar violated sections 70, 72, 76 or 86 of the *Act* in the manner alleged by the union and, if so whether the union is entitled to remedial certification under section 11 of the *Act* or whether some other remedy is sufficient to counter the effects of the contravention.

Evidence

4. The only witness to testify at the hearing was Paul Petten, who is the President and directing mind of Aerostar. He denies that the application for certification played any role in his decision to assign vans or grant hourly rate increases to certain workers after May 26, 2008, the date on which the company received notice of that application. He also testified he did not know there would be a representation vote or the identity of the eligible voters until the parties entered into the Minutes of Settlement on September 29, 2008.

5. Petten testified he does not have any pre-set timetable or plan that he follows for increasing the hourly rate of the company's workers (which includes both employees and dependent contractors). Rather, he stated it is his normal practice to grant increases on an *ad hoc* basis after considering the worker's performance since his last increase, whether the employee has assumed or been assigned added responsibilities and how that worker's wages compare to the rate the company is paying to its other workers who perform similar work. Petten testified it was also his normal practice to assign a worker a company van (that the worker can also use to commute to work) when that

worker's skill has progressed to the point where he can work independently and this was why three workers (one of whom is on the agreed list of voters) were assigned company vans to drive after May 26, 2008.

6. At the hearing the company produced documents, Petten testified he prepared from the company's personnel records, which list the date of hire and wage increases granted since 2005 to the twenty individuals who worked for the company during 2008. These documents indicate that between May 26 and September 29, 2008 thirty hourly rate increases were given to fifteen workers and twelve of these increases went to six of the individuals eligible to vote. Five workers (including three eligible voters, two of whom quit in June 2008 and two other workers who quit in January 2008 and August 2008 respectively) did not receive any increases between May 26 and September 29, 2008.

7. Based on these documents there is no other four-month period since 2005 when the company granted a comparable number of increases to its workers. In the first four months of 2008 the company gave thirteen hourly rate increases to the twelve individuals who worked for the company during this period; twelve workers got sixteen increases in 2007; ten workers got thirteen increases in 2006; and, five workers received thirteen increases during all of 2005.

8. Petten also testified that during the four-month period following the application filing date he had to grant more increases than normal because the company had a substantial increase in business, a significant portion of which was a project for Toronto Hydro that required workers who could work independently, so the company had to hire more workers and assign additional responsibilities to its workers. The records indicate that between January and September 2008 five workers quit and eight workers were hired (5 apprentices and three journeymen). Petten testified that eight of the hourly rate increases implemented after May 26, 2008 went to these newly hired workers because apprentices are virtually guaranteed a $2 increase after three weeks of service and the journeymen electricians normally get a $5/hour increase as soon as they complete the company's training period and demonstrate they can work independently. The records indicate that two of three new journeymen each received a $5.00 increase within one month of joining the company while the other new journeyman got a $2.00 increase four months after he was hired. There is no other instance identified in these records where a worker was given a $5.00 increase.

9. As for all the other increases implemented after May 26, 2008, including those described below, Petten testified they were granted for one or more of the following reasons: the worker's improved performance (i.e. an increase in workload and/or ability to perform tasks, including proper completion of paperwork), the performance of additional responsibilities (including more complex work) and/or to motivate the worker. None of these increases were made known to the affected worker prior to the increase appearing on the worker's pay stub and none of these increases were granted in response to a request from the worker for an increase.

10. In the four month period between May 26, 2008 and September 29, 2008 one worker (who is on the agreed list of voters) received four increases of $2.00 per hour and another worker (not on the agreed list of voters) received five increases that totaled $10.00 per hour. By comparison, these same two workers had only received three increases each (totaling $6.00 per hour for one and $4.00 per hour for the other) between the spring of 2005 (when they were both hired) and early 2008. Further the documents produced by the company indicate that no other employee who was on the company's payroll during 2008 had received increases of more than $6.00 per hour in any twelve

month period and only once before May 2008 had the company granted two increases to one of its workers within the period of a month. After May 26, 2008 one worker was given three increases in less than a month and three workers got two increases within thirty days.

11. Petten conceded that he was aware that the union rate for journeymen was higher than the rate paid by the company to these workers so it was possible that when he got the application for certification he surmised that some of his workers were dissatisfied with the hourly rates at which they were being paid.

Submissions

12. The company denies it violated the Act in the manner alleged by the union. The company takes the position that after May 26, 2008 it was merely carrying on its normal business practice of granting sporadic hourly rate increases to its workers and assigning vans to workers when they could work independently. It maintains the "business as before doctrine" continues to be the law in Ontario.

13. The company further asserts the evidence before the Board must be examined in the context of the following:

a) The union did not call any witnesses so the Board should draw the inference that the union did not have any evidence that would contradict Petten's testimony;

b) The company had no way of knowing that a representation vote would be held or the identity of the eligible voters until September 29, 2008 and no rate increases were granted after that date;

c) Only one eligible voter (#17) was assigned a van after May 26, 2008;

d) Only two employees received more than two raises in 2008: Employee #18 (who was agreed from the outset not to be a member of the bargaining unit) and employee # 17 (an agreed eligible voter) who received all his rate increases because he was performing increasingly complex work.

14. The company also contends the Board should infer from the fact that none of the workers had asked for a raise that the workers expected the company to grant them periodic increases and if the company failed to continue with its normal practice of granting *ad hoc* increases this could constitute a breach of section 86(2) of the Act. Finally, the company maintains that Petten was managing the company in the same manner as he had managed it prior to the application for certification so, for the reasons articulated in the Board's decisions in *St. Mary's Hospital* [1979] OLRB Rep. August 795, and *Oakville Lifecare Centre* [1993] OLRB Rep. Oct. 980, the company's actions do not constitute a violation of the statutory freeze or an attempt by the company to influence the representation vote contrary to the Act.

15. The union asserts there was always a possibility that a representation vote would be necessary to resolve the application for certification. The union points out that the majority of the

raises granted by the company in 2008 were implemented after May 26, 2008, the date Petten testified the company received notice of the application for certification. The union also asserts the frequency and magnitude of the increases the company granted after May 26, 2008 date are not consistent with the company's normal business practice in the three year period prior to that date. The union further maintains these increases cannot be considered to have been within the reasonable expectation of the workers particularly when none of the workers testified about their expectations.

16. The union seeks remedial certification pursuant to section 11. It relies on section 11(2) of the Act and maintains the company's actions in implementing hourly rate increases to its workers and assigning vans to certain workers after May 26, 2008 violated sections 70, 72, 76 and 86(2) of the Act.

Decision

17. Section 86(2) of the Act reads as follows:

> (2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,
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> (a) the trade union has given notice under section 16, in which case subsection (1) applies; or
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> (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

18. The statutory freeze provisions in section 86 of the Act are intended to maintain the *status quo* after an application for certification has been filed until either a collective agreement is bargained or the application is terminated or withdrawn. The purpose of section 86 is succinctly stated in the Board's decision in *Price Club Westminster*, [1994] OLRB Rep. Aug. 1029:

> 113. The purpose of the freeze provisions is to ensure that following the filing of an application for certification and during the period required by the Board to resolve the issues relevant to the application, no interruption will occur in the existing employment relationship which may influence employees with respect to representation by the union...

19. However, the prohibition on altering wage rates or any other term of employment is not so restrictive as to prevent the employer from implementing changes that were announced prior to the onset of the freeze or from otherwise carrying on "business as before" in accordance with its previously established pattern of operation. In *Oakville Lifecare Centre*, *supra*, the "business as before" principle was discussed:

> 29. In fact however the Board has consistently interpreted the freeze provisions in a more purposive manner and has rejected any strict, literal interpretation of the provisions, which would result in a static, unchanging employment and business environment. A flexible, more purposive labour relations approach permits the Board to be more responsive to the circumstances, concerns and

> interests of the litigants appearing before it. For that reason the Board has developed tests such as "business as usual" and the "reasonable expectations of the employees". In applying any of these tests the Board must carefully balance what are inevitably the competing interests, rights and obligations of the parties as their relationship moves through the collective bargaining process which follows the certification of the union and the giving of notice to bargain.
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> ...
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> 32. Both the "business as usual" and "reasonable expectations" tests may at times be difficult to apply. The tests however enable the Board to properly consider and balance the rights and privileges of the employer as circumscribed by the rights and privileges of the employees and their bargaining agent. Thus in this case there is no doubt that the events and circumstances of November and December 1992 "changed" the business and employment environment at Lifecare. The issue however is whether this "change" was merely business as usual (justified by the economic circumstances facing the employer), and whether the change was consistent with the reasonable expectations of the employees concerning their continued terms and conditions of employment, privileges or duties during the freeze period. ...

20. Further, it is not necessary for there to be a finding of anti-union animus for the Board to determine that there has been a breach of section 86 of the Act. As stated in *My Building Corporation*, [1999] O.L.R.B. Rep. Nov/Dec 1058 at paragraph 28:

> ... In determining the content of section 86(2) of the Act, it should be noted that this provision operates in addition to the unfair labour practice sections which prohibit behaviour that is motivated by anti-union animus. By way of contrast a breach of section 86(2) does not require a finding of anti-union animus to establish a breach of the Act. The freeze captures something that other unfair labour practices do not; bona fide business behaviour that is not motivated by anti-union considerations. Section 86(2) is intended to limit unilateral action on the part of the employer that is at the starting point in establishing a collective bargaining relationship with its employees.

21. In this case, there is no dispute that during the freeze period the company conferred numerous hourly rate increases on the workers who are affected by this application for certification without seeking the consent of the union. Even if the Board accepts the company's assertion that it did not know or contemplate the possibility that there might be a representation vote this does not absolve the company from the requirement to comply with subsection 86(2) of the Act because the employer's motivation is irrelevant to the operation of the statutory freeze. Under the Act, the freeze on terms and conditions of employment commenced on May 26, 2008 and it will continue until either the parties conclude a collective agreement or the application for certification is terminated or withdrawn.

22. The Board recognizes that the data provided at the hearing regarding the pay increases the company conferred on its workers between 2005 and 2007 is incomplete because it does not include information about those workers who left the company before January 1, 2008. It was open to the company to present this evidence for the purpose of establishing that its conduct after May 26, 2008 was "business as usual". The fact that the company did not provide complete information regarding the increases it conferred on all of its workers from 2005 to 2007 means the Board must draw its

conclusions regarding this period having regard only to the company's practice in relation to those individuals who continued to work for the company after January 1, 2008. It is also open to the Board to conclude that further payroll information for the years 2005 through 2007 would not have advanced the company's assertion it was, at the material time, acting in the ordinary course of business.

23. The evidence before the Board is that between May 24, 2008 and the end of September 2008 four workers quit, five workers were hired and a total of nineteen individuals worked for the company. Over that four-month period thirty hourly rate increases were granted to fifteen workers and eleven of these increases went to five workers on the agreed voters list. Even after taking into consideration the initial increases that were granted to the newly hired workers the evidence before the Board indicates that there is no other period since 2005 when the company granted so many increases to this many workers over a four-month period. Nor does the evidence demonstrate that since 2005 the company had a practice of granting multiple increases to workers over a four-month period that totaled $6.00 or more per hour.

24. Accordingly, I do not find that the company has established it was simply operating on a business as usual basis when it implemented wage rate increases for many of its workers, including those entitled to participate in the representation vote, after the freeze commenced on May 26, 2008.

25. Nor on the evidence can I find that the company's workers expected to receive increases of the magnitude and frequency that occurred after May 26, 2008. The pattern of increases after May 26, 2008 bears little resemblance to the increases many of the same workers received during the previous three years. Furthermore, none of the workers testified regarding their expectations and the evidence provides no basis for concluding the majority of the increases granted during the freeze were routine and within the reasonable expectation of the workers.

26. The company also contends it had to give out more increases in the four months after the application for certification was filed because the company's business had increased substantially requiring more workers to be hired and additional responsibilities to be assigned to many workers. Once again the evidence, in its entirety, does not support this assertion. The company's total complement only increased by one worker after May 2008 and the evidence on this issue is insufficient to explain the company's decision to grant multiple increases within a one-month period to some of its workers.

27. The company asserts it has demonstrated it was not seeking to influence the vote because it also gave increases to workers who were not entitled to vote and no increases were granted after the agreement to have a vote was entered into on September 29, 2008. However, it is equally plausible to conclude that the precise reason the company gave increases to so many workers was because the status of many of these workers was in dispute and the potential for a vote remained. Further, six of the seven voters who remained in the company's employ after June 2008 received increases contrary to subsection 86(2). In any event, this submission by the company relates to the issue of motivation, which is not a factor that is relevant to the determination of whether the increases violated subsection 86(2) of the Act.

28. I am satisfied that when the company implemented the vast majority of the hourly rate increases for its workers after May 26, 2008 it was not carrying on business as before. These increases were neither promised to nor were they within the reasonable contemplation of the workers.

The only possible exception might be the initial increases that Petten testified he granted to the newly hired workers after they each completed the company's training period. However, even these increases are suspect because it is not apparent that the company had a consistent practice of granting such increases to its workers. As a result, I find the company's actions in implementing and granting wage rate increases for its workers between May 26, 2008 and September 29, 2008 violated section 86(2) of the Act.

29. I am also satisfied that it is reasonable to infer that at least part of the company's motivation when it implemented these increases was to undermine the support for the union and therefore constitutes undue influence contrary to section 70 and 72 of the Act.

30. Sections 70, 72 and 96(5) of the Act read as follows:

> **70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.
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> **72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,
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> (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.
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> ...
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> **96.** (5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.

31. In *The Globe and Mail*, [1982] OLRB Rep. Feb. 189 (cited with approval in *Canac Kitchens Limited*, [1994] OLRB Rep. August 972) the Board discussed the meaning of the term "undue influence" as it is used in section 72 (then section 64) of the Act and the mischief that may arise from the employer conferring benefits on its workers during an organizing campaign as follows:

> 50. [...] The Board has long recognized the sensitive nature of the employer-employee relationship and the position of dominance enjoyed by the employer. The employer decides who will work and under what terms and conditions of employment. The employer is in a position to respond to employee concerns or to ignore them. The scheme of collective bargaining provided under the Act is designed to place employees on a more equal footing with their employer. If, when faced with a move by employees to avail themselves of collective bargaining, an employer uses his authority to confer benefits or to otherwise improve the terms and conditions of employment, and does so with a purpose of undermining the trade union, must it be found that the employer, given the extent of his authority within the employment relationship, has exercised undue influence? The answer, regardless of the co-existence of a business motive, is yes. An employer who takes advantage of and relies upon his control over the employment relationship in this manner unduly influences his employees in contravention of the Act.

32. More recently, in *Carlos Barbosa Concrete Limited*, 2008, CanLII 26617 (May 26, 2008), the Board determined the following conduct by the company contravened both sections 70 and 86 of the Act.

> 48. In the present case, Mr. Barbosa implemented wage increases without seeking or obtaining the consent of the union at a time when the statutory freeze on the alteration of wages was in effect. While wage increases had been granted from time to time in the past, the evidence concerning Mr. Barbosa's historical practice in that regard indicates that employees would have no reason to expect the across the board increase given in April 2006 as this type of increase was not the norm. Previously, wage increases were granted on an *ad hoc* basis to one or a few employees at a time. Mr. Barbosa offered no reasonable explanation for the change to his practice in 2006 and, in fact, refused to acknowledge any such change despite the fact that wage increases were generally given sporadically to one or a few employees at a time.
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> ...
>
> 50. In all the circumstances, I am satisfied that a reasonable inference can be drawn that at least part of Mr. Barbosa's motivation in granting the increases in April 2006 was to undermine support for the union such that the increases given also amount to undue influence contrary to section 70 of the Act (See: *Canac Kitchens Limited*, [1994] OLRB Rep. August 972). In any event, I find that the across the board increases to all employees following the filing of the certification application does not represent a continuation of business as before, nor would it have been within the reasonable expectation of employees.

33. Although Petten denied the application played any role in his decision to grant any of these increases he also agreed it was possible that when he got the application he thought that some of the workers were dissatisfied with rate the company was paying them. On balance, this explanation seems more probable in all the circumstances. Further, in the absence of a more plausible explanation for the company's apparent change in practice after May 26, 2008, I am left to conclude that the company's conduct in conferring wage rate increases after it received notice of the application for certification was designed to exert undue influence on the workers affected by this application and to undermine support for the union. In short, the company has not discharged the onus it bears under section 96(5) of the Act to prove it did not contravene sections 70 and 72 the Act.

34. Therefore, having regard to all the evidence, I am satisfied that Aerostar Electrical Services Inc., violated sections 70, 72 and 86(2) of the Act when it implemented changes to the hourly rates it paid to many of its workers who were affected by the application for certification after May 26, 2008 without first obtaining the union's consent.

Appropriate Remedy

35. The union asserts the appropriate remedy for the company's breach of the Act is remedial certification under section 11 of the Act. The company did not dispute the union's assertion it only learned about the company's conduct at the captive audience meeting the parties agreed the union could hold with the eligible voters on October 6, 2008. Nor did the company take the position that under the September 29, 2008 agreement the union was foreclosed from seeking relief under section 11(2) of the Act and the application for certification had to be determined solely on the basis of the representation vote held on October 8, 2008.

36. By May 24, 2008 the union had obtained sufficient evidence to file this application and elect to proceed under section 128.1 of the Act. On September 29, 2008 the union agreed to a list of voters for which the union's support was between 40% and 55%. The union lost the representation vote held on October 8, 2008 by 6 votes to 3 votes.

37. As with many cases, the facts before the Board in this case are unique and the nature of the employer's misconduct does not easily fit into the jurisprudence. Therefore, the Board must determine the appropriate remedy having regard to the general principles enunciated in the jurisprudence that has considered section 11(1) of the Act which reads as follows:

> **11.** (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,
>
> (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
>
> (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.
>
> (2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,
>
> (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
>
> (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
>
> (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate

> for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.
>
> (3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).
>
> (4) On an application made under this section, the Board may consider,
>
> (a) the results of a previous representation vote; and
>
> (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

38. Under section 11 the Board must first conclude that the true wishes of the employees in the bargaining unit were not likely reflected in the representation vote held on October 8, 2008.

39. This case does not involve the typical behavior (i.e. threats to job security, violence or the termination of a union supporter) that the Board has previously recognized will tend to have such an "intimidating effect that employees might reasonably be expected to refrain from voting for the union no matter what their true feelings about be represented by it" so it is likely the representation vote did not reflect the true wishes of the employees in the bargaining unit. (See: *Winson Construction Ltd.*, [1976] OLRB Rep. November 714 at paragraph 15).

40. When determining whether, as a result of the employer's contravention of the Act, the true wishes of the employees are not likely reflected in the representation vote, the Board has historically applied an objective test. This test was reviewed in *Zest Furniture Industries Ltd.*, [1987] O.L.R.B. Rep. Feb 299:

> 38. In some cases, the Board has referred to the impact of employer misconduct on an "employee of average intelligence and fortitude" (*Wolverine Tube, Division of Calumet and Hecla of Canada Limited*, 63 CLLC ¶16,296) while in others the bench mark has been expressed in terms of the "typical employee" (*Seven-UP/Pure Spring Ottawa*, [1984] OLRB Rep. Jan. 87). The Board will examine both the nature of the employer's misconduct and the circumstances in which it took place, and its conclusions will vary depending on the specific mix of factors that it finds in any particular situation.
>
> 39. Where the impact of misconduct is obvious, it may be that no demonstrative evidence will be required. As the Board noted in *Robin Hood Mul[illegible]oods, supra*:
>
> > There may be occasions, however, where the contravention would so obviously undermine the likelihood of a free vote (such as a direct or implicit threat to employees' job security) that no demonstrative evidence need be adduced with respect to [whether the conduct was such that the true wishes of the employees were not likely to be ascertained].
>
> 40. In other cases, it may be useful for the parties to adduce facts which might enlighten the Board as to the effect of less obvious misconduct in the circumstances of a specific work place, including objective facts which may show that the impact of certain activities is enhanced or diminished in the

> particular circumstances. But in all cases the test the Board uses will not be how or whether employee "A" or employee "B" was personally affected, but rather the *likely impact of the mis*conduct on the typical employee. Consequently, it is neither necessary nor desirable for the parties to parade a series of employees before the Board to testify as to their individual responses or feelings as a result of the employer's activities.

41. Applying that objective test to the facts in this case, I am satisfied that as a result of the company's conduct in granting wage rate increases to so many of its workers, including six of the nine individuals who were eligible to participate in the representation vote, it is likely that the true wishes of the workers were not reflected in the representation vote. In circumstances where none of these increases had been requested by the workers and no explanation was communicated to the workers for the increases the company was granting, the most logical conclusion to be drawn by the workers is that these wage increases were designed to convince the workforce that it did not need the union to represent them in order to obtain improved working conditions. Therefore, I am satisfied that as a result of the company's misconduct the true wishes of the workers were not likely reflected in representation vote held on October 8, 2008.

42. The Board's approach since the Act was amended in 2005 is to grant remedial certification under section 11 of the Act where the employer has either made threats to job security or engaged in a range of unlawful conduct that cumulatively has irreparably harmed the ability of the employees to freely choose whether or not they wish to be represented by the applicant union and no other remedy would be sufficient to counter the effects of the employer's misconduct. This approach is discussed in *JAK Electrical Contractors Ltd.*, [1997] O.L.R.D. No.4414, as follows:

> 130. As noted by the Board in the recent decision of *Maverick Mechanical Contractors Limited*, [1996] OLRB Rep. March/April 289, at paragraph 25, the Board has, generally, granted remedial certification in two broad categories of cases. Where an employer has made threats to the continued job security of its employees, conditional upon whether the union succeeded in its attempt to become certified, the Board has historically certified that union pursuant to section 11 of the Act (or its predecessors). Alternatively, the Board has certified a union automatically where a range of unlawful employer activities, none of which taken separately would lead to remedial certification, has the cumulative effect of undermining the confidence in the rule of law which a reasonable employee is presumed to have and which gives a reasonable employee the confidence to make a free choice.
>
> 131. In either of these two scenarios, it is well established that the remedy of "remedial certification" is not to be utilized by the Board in a punitive manner, but rather is a remedial option provided to the Board to ensure that an employer is not rewarded for its misconduct during a union organizing campaign. The legislature has recognized that it is inappropriate to permit an employer, though its own violations of the Act, to eliminate any chance that the true wishes of its employees could be reflected by way of a representation vote. Where the employer has acted in such a manner, the Act provides the Board with the power to automatically certify the union as the bargaining agent of the employees in the bargaining unit determined to be appropriate by the Board – whether the union would or would not otherwise have been successful in the absence of the unlawful conduct of the employer.

43. However, I am not satisfied that in this case the company's misconduct is such that the ability of the workers to freely choose whether or not they wish to be represented by the union has been irreparably harmed and, as a result, the union is entitled to remedial certification under subsection 11(2)(c) of the Act because no other remedy would be sufficient to counter the effects of the company's contravention.

44. First, this is not a situation where the results of vote indicate the union lost significant support between the time the application was filed in May, 2008 and when the vote was held in September 2008 which is a factor I am entitled to consider by virtue of subsection 11(4)(a) of the Act. Further, the nature of misconduct did not include either threats to job security or the termination of a union supporter, contraventions of the Act that the Board has previously indicated sends an obvious message to the workers that, if unionized, their future employment could be at risk so that a representation vote is unlikely to reflect the true wishes of the employees even if other relief is granted in an attempt to ameliorate the impact of the company's actions.

45. Accordingly, I am satisfied that the appropriate remedy in this case is to direct that another representation vote be held (involving the individuals who the parties previously agreed were entitled to participate in the representation vote held on October 8, 2008) together with the following declarations and orders:

a) The Board declares that the company has violated sections 70, 72 and 86 of the Act and the company is therefore directed to cease and desist from interfering in the free selection, or not, of a union by the employees in the bargaining unit.

b) The Board orders that the result of the representation vote held on October 8, 2008 is hereby set aside.

c) The Board directs that a fresh representation vote will occur on a date to be set by the Board. The union shall have two working days from the date of this decision to advise the Board in writing of the date on which the representation vote should be held. This date must be within a reasonable period of time failing which the Board will determine the date of the representation vote without regard to the date proposed by the union.

d) The company is directed to post a copy of this decision and the "Notice to Employees" attached to this decision as "Appendix A" in the workplace where it will come to the attention of the individuals affected by this application and to keep the notice posted for a period of thirty (30) days.

e) If so requested by the union in writing, the company will forthwith provide the union with the current address and phone number for each of the individuals who still work for the company who are entitled to participate in the representation vote and the last known address and telephone number of those individuals who no longer

work for the company who are entitled to participate in the representation vote.

f) Two days before the representation vote the union is entitled to hold a captive audience meeting for one hour with only those individuals who are entitled to participate in the representation vote at the company's shop (166 Toryork Drive, Unit #6, Toronto, Ontario) during regular working hours without the workers suffering any loss in pay. Those individuals who no longer work for the company may also attend this meeting.

g) The union may designate two representatives who are entitled to attend at the company's premises (166 Toryork Drive Unit #6 Toronto) for thirty minutes prior to and for thirty minutes after the conclusion of each workday for the purpose of communicating with the individuals who are entitled to participate in the representation vote. However, these communications must not delay or otherwise prevent the performance of the work that the company has assigned to these workers.

Appendix "A"
The Labour Relations Act, 1995

NOTICE TO EMPLOYEES
Posted by order of the Ontario Labour Relations Board

This notice has been posted in compliance with an Order of the Ontario Labour Relations Board issued after a hearing. The Board has determined after a hearing that Aerostar Electrical Services Inc., violated the *Labour Relations Act, 1995*. The Board concluded, as a result of these violations, that the true wishes of the employees were not likely reflected in the representation vote held on October 8, 2008. The Board is therefore directing that another representation vote be held and the union be permitted to meet for one hour, on company time and without any loss of pay, with the nine individuals listed below, who are entitled to participate in the representation vote.

List of Voters

1. Da Costa, Jordao (Jordon)
2. De Sousa, Paul
3. Heidari, Seyed
4. Montchovsky, Hristo
5. Pulyanovich. Aliaksandr
6. Quinto, Vito
7. Rogal, Serguei
8. Rowntree, Raymond
9. Tomayanev, Rumen

The Board informs the employees of the following:

All employees in Ontario have these rights which are protected by law:

> An employee has the right to join a trade union of his or her own choice and to participate in its lawful activities.
>
> An employee has the right to oppose a trade union, or subject to the union security clause in the collective agreement with his or her employer, refuse to join a trade union.
>
> An employee has the right not to be discriminated against or penalized by an employer or by a trade union because he or she is exercising rights under the *Labour Relations Act, 1995*, as amended.
>
> An employee has the right not to be penalized because he or she participated in a proceeding under the *Labour Relations Act, 1995*, as amended.
>
> It is unlawful for employees to be fired or in any way penalized for the exercise of these rights. If this happens, a complaint may be filled with the Ontario Labour Relations Board.

It is unlawful for anyone to use intimidation to compel someone else to become or refrain from becoming a member of a trade union, or to compel someone to refrain from exercising rights under the *Labour Relations Act, 1995*, as amended.

This is an official notice of the Board and must not be removed or defaced.
THIS NOTICE MUST REMAIN POSTED FOR 30 CONSECUTIVE DAYS.
Dated this 4th day of March, 2009

0739-08-R International Brotherhood of Electrical Workers, Local 586, Applicant v. **AGI Traffic Technology Inc.**, Responding Party v. International Brotherhood of Electrical Workers, Local Union 353, Intervenor

Bargaining Unit – Certification – Construction Industry – Local 586 filed a timely application to certify a bargaining unit of employees in non-ICI sectors who made up part of a unit established by the collective agreement between Local 353 and the Employer – Local 586 argued that, notwithstanding the Board's general policy with respect to displacement applications (that the unit applied for should mirror the incumbent unit), s. 158(2) requires the Board to accept the unit applied for by an applicant and effectively removes the Board's discretion to find a different appropriate unit pursuant to s. 128(1) – The Board rejected Local 586's assertion that the Board was constrained to deal only with the unit applied for – The Board held that in certain circumstances (evidence of inadequate representation; an employer's tolerance for limited fragmentation; a presumption of predictability) a smaller unit may be carved out from an existing, larger unit – None of these circumstances obtained in the present application – Application dismissed

BEFORE: *Mark J. Lewis*, Vice-Chair, and Board Members *B. Roberts* and *A. Haward.*

APPEARANCES: *Ron Lebi* and *James Barry* appearing for the applicant; *Carl Peterson, Kent Boyee* and *Brian Farrel* appearing for the responding party; *Harold F. Caley* and *Bill Finnerty* appearing for the intervenor.

DECISION OF THE BOARD: March 17, 2009

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995,* S.O. 1995, c. 1, as amended (the "Act") that the applicant ("Local 586") elected to have dealt with under section 128.1 of the Act.

2. As set out in greater detail below, the bargaining unit which Local 586 has applied for forms part of the existing bargaining unit established by the collective agreement between the responding party ("AGI" and/or the "Employer") and the intervenor ("Local 353"). However, as all of the parties have now agreed that this application is timely, the only issue that remains in dispute between them is the appropriate bargaining unit description. Specifically, Local 586 takes the position that the bargaining unit which it applied for is the appropriate one. Conversely, AGI and Local 353 both assert that the appropriate bargaining unit for this application is that set out in the existing collective agreement.

The Facts

3. None of the facts relevant to the bargaining unit issue were in dispute.

4. AGI is an electrical contractor which operates throughout Ontario. As the name implies, its work primarily (if not exclusively) relates to traffic and street lighting.

5. On January 5, 2005, the Board certified Local 353 as the exclusive bargaining agent for all journeymen and apprentice electricians in the employ of AGI in all sectors of the construction industry in the Province of Ontario, excluding the ICI sector, save an except non-working foremen

and persons above the rank of non-working foreman. Prior to this certificate being issued, the electricians for whom Local 353 became the bargaining agent had formed part of a broader bargaining unit represented by Labourers' International Union of North America, Ontario Provincial District Council and its constituent Local Unions. On July 4, 2005, Local 353 and AGI entered into a collective agreement. The bargaining unit in the collective agreement is exactly the same as that set out in the Board's certificate. The collective agreement was effective, on its face, from January 5, 2005 until April 30, 2007.

6. It does not appear that the original collective agreement was ever formally renewed. However, there was no dispute that since April 30, 2007 AGI and Local 353 have continued to follow the terms of the agreement, which is in the nature of a standard construction industry *pick-up agreement* in any event. Initially, Local 586 claimed that Local 353 had abandoned any bargaining rights it may have once had with AGI but it did not pursue this position at the hearing before the Board (just as AGI and Local 353 did not pursue their initial positions that this application was untimely).

7. On June 3, 2008, Local 586 filed this application for certification in which it applied to represent employees in the following bargaining unit:

> all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers employed by the Responding Party in all sectors of the construction industry excluding the ICI sector in Ontario Labour Relations Board geographic area 15 save and except non-working foremen and persons above the rank of non-working foreman.

8. Both AGI and Local 353 responded to the application in a timely manner. They both took the position that the bargaining unit applied for was not appropriate and that the appropriate unit was that set out in their collective agreement, namely:

> all journeymen and apprentice electricians in the employ of the Employer in all sectors of the construction industry in the Province of Ontario, excluding the industrial, commercial, institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

9. It is not disputed that there was a total of three persons (two journeymen and one apprentice electrician) at work within the bargaining unit applied for on the date of application and, therefore, if this is the appropriate bargaining unit, Local 586's application was accompanied by membership evidence on behalf of more than 40 per cent of the employees at work in the bargaining unit on the date of application. Further, it is not disputed that there were significantly more than three persons at work on the date of application within the broader bargaining unit proposed by AGI and Local 353 (possibly as many as a total of 25 employees). What ever the number of employees who were at work in the broader unit actually is, Local 586 agrees that it did not file membership evidence on behalf of more that 40 per cent of this larger group of employees.

The Positions of the Parties

10. Local 586 does not dispute the Board's general policy that, in displacement applications (which it now agrees this application is), applicant trade unions are required, in the normal course, to apply for a bargaining unit that *mirrors* the existing bargaining unit of the incumbent trade union. However it asserts that in this case the Board's general policy is simply not relevant given the explicit provisions of the Act. In support of this position it relies upon subsection 158(2) of the Act which states the following:

> **158.** (2) Despite subsection 128(1), a trade union represented by an employee bargaining agency may bring an application for certification in relation to a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector and the unit shall be deemed to be a unit of employees appropriate for collective bargaining.

11. Local 586's position is that it is a trade union represented by an employee bargaining agency and that the bargaining unit that it has applied for is clearly one that relates to a unit of employees employed in all sectors of the construction industry other than the industrial, commercial and institutional sector. Therefore, it asserts that the bargaining unit which it has applied for is, and must be, an appropriate bargaining unit as the explicit wording of the statute, notably the second clause of subsection 158(2), deems this to be the case.

12. Local 586 does not dispute that, pursuant to the provisions of subsection 128(1) of the Act, the Board, in dealing with an application for certification in the construction industry, not only has the power to, but indeed must, determine the unit of employees that is appropriate for collective bargaining. Further, it does not dispute that in any particular application there may be more than one unit which might be appropriate. Rather, it asserts that in this case, where it, as the applicant, has chosen to apply to represent a unit of employees which must, by virtue of the statute, be found to be appropriate, there is simply nothing left for the Board to decide and that as such the Board should simply proceed to deal with this application on the basis of the bargaining unit which it described in its application.

13. AGI and Local 353 both take the opposite position to that of Local 586 in respect to the Board following its general mirroring policy in the particular circumstances of this case. Specifically, they both assert that the mere fact that a particular bargaining unit which a trade union has applied for is an appropriate bargaining unit, whether because a section of the Act deems it to be so or because of some other basis, does not mean that it is the only appropriate bargaining unit and that faced with more than one appropriate bargaining unit the Board still has the discretion to determine which it will find to be the appropriate one. They both acknowledge that, generally, if the applicant's unit is an appropriate one it will be accepted by the Board. However, they assert that there are specific situations where this will not be the case and, as the Board's clearly established mirroring policy makes clear, displacement applications have long been held to be one of the exceptions to the Board's general policy of granting the bargaining unit applied for if it is an appropriate one.

The Decision

14. We are not aware of any previous decision in which the Board has dealt with a trade union seeking to rely upon subsection 158(2) of the Act in order to carve out a specific bargaining unit from

an existing broader unit. Certainly, none of the parties could provide us with any prior decisions of the Board dealing with such an application. Accordingly, as this appears to be a *case of first instance* the only logical starting point in analysing the positions of the parties is the wording of the relevant sections of the Act.

15. Subsection 128(1) of the Act states the following with respect to applications for *certification in the construction industry:*

> **128.** (1) Where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project.

16. By virtue of this subsection, the Board has the power to, and indeed is required to, *determine the unit of employees that is appropriate for collective bargaining* in respect of such applications.

17. Obviously subsection 158(2) which, as noted above, begins with the words *despite section 128(1),* modifies the Board's powers to determine the appropriate bargaining unit under section 128(1). However, with great respect to the arguments advanced by Local 586, we do not conclude that subsection 158(2) entirely removes all discretion that the Board might otherwise have pursuant to subsection 128(1) in determining the unit of employees that is appropriate for collective bargaining. In this respect we agree with the Board's decision in *Havenwood Homes,* [2008] OLRB Rep. March/April 201 (April 24, 2006). In that decision the Board stated the following in ultimately finding that the combined effect of subsections 128(1) and 158(2) was to establish a *minimum geographic area* for non-ICI construction industry bargaining units without in anyway limiting the Board's discretion to find that a bargaining unit described with reference to a larger geographic area might also be appropriate:

> 19. It is noteworthy that subsection 128(1) of the Act specifies that a bargaining unit be described "with reference to a geographic area" not by geographic area. This leaves open not only the description of bargaining units for workers in the so-called white areas, but it also allows the exercise of the Board's discretion to describe bargaining units in terms that are broader than just one geographic area. HHL's argument concedes that subsection 128(1) is not eliminated by the initiating verbiage in subsection 158(2) "despite subsection 128(1)". The two subsections must be read together.
>
> 20. There can be no question that subsection 158(2) of the Act unequivocally "deems" a unit of employees engaged in non-ICI work in "a geographic area" to be appropriate for collective bargaining. The purpose of this is to eliminate any debate about what ought to be minimal coverage encompassed within a certificate not to foreclose the Board making a determination that a bargaining unit description that goes beyond one geographic area is appropriate. In different terms, the same result is accomplished in subsection 158(1) and the certificate ultimately issued with respect to non-ICI work under subsection 160(1) can be based upon more than one geographic unit. Nothing in any of these subsections *confines* the Board to finding appropriate only a bargaining unit with one geographic area described if the union applicant asks for more and can show that it has members are at work on projects in geographic areas referenced.

> 21. Put another way, neither subsections 158(1) or (2) of the Act eliminate the Board's discretion under subsection 128(1) of the Act to determine, in the context of the construction industry, the unit of employees that is appropriate for collective bargaining "by reference to a geographic area". This conclusion makes labour relations sense because there is nothing inherently wrong with employees who are working in the non-ICI sectors for the same employer in a number of geographic areas banding together into a larger bargaining unit than the minimum established by subsections 128(1) and 158(2) of the Act.

18. Applying the logic of the Board's reasoning in *Havenwood Homes, supra,* to this particular situation leads to the conclusion that both Local 586's and AGI's/Local 353's descriptions set out an appropriate bargaining unit. As Local 586 asserts, the bargaining unit which it applied for is an appropriate one as it is deemed to be so by virtue of subsection 158(2). Conversely, as both AGI and Local 353 assert the existing bargaining unit found within the collective agreement is also an appropriate one under the Act as it simply provides for the employees within a specific trade (journeymen and apprentice electricians) banding together in a bargaining unit covering a larger geographic area than the minimum area provided for by virtue of subsections 158(2) and 128(1) of the Act. Therefore, the ultimate issue to be decided in this matter is which of these two units, both of which are *an* appropriate one, is *the unit of employees that is appropriate for collective bargaining* in the specific circumstances of this application.

19. In *Havenwood Homes, supra,* the Board's decision in choosing between competing units was a relatively easy one to make once it had determined that it had the discretion, under subsection 128(1), to establish a bargaining unit with a larger geographic area than the minimum area provided for by subsection 158(2). In that case there was no existing collective agreement and therefore, since the union had both organized the employees in, and applied for, the larger area, there was no reason not to find the bargaining unit covering the larger geographic area to be the appropriate one. In this case the choice is not so simple to make.

20. Here the factors which support finding the bargaining unit covering the larger geographic area to be the appropriate one relate to the Board's longstanding preference not to disrupt existing patterns of collecting bargaining involving specific employers and specific groups of employees. This preference has resulted in the Board's general policy that a trade union seeking to displace an existing trade union should mirror the bargaining unit held by that existing trade union. In this respect the Board stated the following in *Toronto East General and Orthopaedic Hospital, Inc.*, [1981] OLRB Rep. February 225:

> ...
>
> 12. The Board is required under section 6(1) of the Act to determine the unit of employees that is appropriate for collective bargaining. If AAHP's application were not a displacement application but rather a fresh application relating to employees not already represented by a trade union, the Board, in all likelihood, would consider the broad, all paramedical employee unit applied for by AAHP to be appropriate. (See the Board's decisions in *Stratford General Hospital,* [1976] OLRB Rep. a459, and *Hôpital Montfort* [1980] Rep. Nov. 1647).
>
> 13. In a displacement application, however, the Board's a general practice is to view the established bargaining structure as *prima facie* appropriate, particularly where the parties have themselves incorporated it into a collective

agreement. In *Milltronics Limited* [1980] OLRB Rep. Jan. 56 the Board refused to accede to the employer's submission that a unit larger than the existing unit was appropriate. At p. 58 the Board said,

> Usually ... a "raiding union" must "take" what the incumbent union has.

(See also *Electrohome Limited,* [1967] OLRB Rep. Dec. 854).

14. In considering a displacement application for certification the Board has to be sensitive to the existence of an established bargaining relationship. The Board's practice of requiring the applicant to "'take' what the incumbent has" emanates from the belief that the employees in an existing bargaining unit should alone decide, as a separate group, whether they want to change bargaining agents. In *Toronto Star Limited,* [1974] OLRB Rep. July 416 the vice-chairman, in his dissent on another point, explained the rationale supporting the Board's general practice. At p. 417 he said,

> The reason for holding as appropriate the bargaining unit described in the scope clause of a collective agreement in a displacement application is employees affected by the application. It would be contrary to the efficacy of a past history of viable collective bargaining to upset the integrity of that bargaining unit without first soliciting the views of the employees affected.

...

21. Nevertheless, the Board's mirroring policy is simply that, a general policy which may obviously not be appropriate in every case, and the Board has clearly enunciated criteria which may be appropriate to consider in determining whether or not to depart from the general rule that *the raiding union must take what the applicant union has.* For example, in *Bestview Holdings Limited,* [1983] OLRB Rep. February 185 the Board stated:

...

14. A much more definitive view was expressed in *Ontario Hydro* [1980] OLRB Rep. June 882. There a union sought to carve out the employees at Hydro's nuclear installations from a long-established province-wide bargaining unit. The Board expressed considerable doubt that the union would be able to establish the appropriateness of the unit which it sought.

> "It is against this background then that we must determine whether the pre-hearing vote requested by the applicant should be directed. The first issue is whether the province-wide unit described in the CUPE Local 1000 is the only appropriate unit and in support of this number of decisions including: *Roland Lefebre Limited* [1966] OLRB Rep. May 140; *Toronto Star Limited* [1974] OLRB Rep. July 416; *Harding Carpets Limited* [1975] OLRB Rep. July 566 (where the applicant successfully interevened [sic] on the basis of the doctrine); *The Wellesley Hospital* [1976] OLRB Rep. Feb. 46; *The Canadian Red Cross Society Blood Transfusion Service* [1978] OLRB Rep. May 408. This principle is not to be lightly dismissed. Where parties have established the viability of a bargaining unit through actual bargaining and where the history of such bargaining

> has been relatively satisfactory, this Board ought not to encourage fragmentation. Moreover, in these cases, the Board is not dealing with employees who are unrepresented by a trade union. Thus, more concern can be given to the most viable unit from a collective bargaining viewpoint without the risk of impeding the initial organization of employees attempting to engage in bargaining. But the principle cannot be without its exceptions. Section 48 of the Act clearly envisages displacement applications which are less extensive than pre-existing bargaining units. *While there is a strong presumption in favour of the incumbent trade union's bargaining unit, the Board is willing to entertain evidence and submissions on why the status quo ought not to be maintained. The incumbent trade union may clearly have failed to represent a distinct and cohesive group adequately, a problem that has sometimes reared its head in the relationship of skilled and unskilled employees. This problem of unsatisfactory representation may be combined with a capacity in the employer to tolerate somewhat greater fragmentation, particularly if the smaller unit sought can meet the principles of appropriateness generally applied to certification cases.* In the case at hand, the applicant indicated its intent to adduce evidence on the distinctive nature of Hydro's nuclear energy facilities; on the common training and conditions of employment of the affected employees; and on the manner in which they have been represented by CUPE Local 1000. The unit relied upon by the intervener and the employer is not one that the Board would normally grant and the intervener, itself, never had to organize all the affected employees. Against this background, we are not prepared to say at this time that the applicant will be unable to make out a case justifying the unit it has requested. On the other hand, the applicant's chances for success based on its answers to the Board's probing and against the background of all that we have reviewed above, cannot be characterized as substantial."

15. To these considerations, a final one may be added: the importance of certainty and predictability in the processing of representation applications. It is in the interests of all parties, including an applicant union, to know with some certainty the bargaining unit configuration which the Board will likely find to be appropriate. It is that group of employees which a raiding union must seek to organize, and within which it must establish majority support. The practical value of the rule that a raiding union must usually take the bargaining unit as it finds it, is that it clearly defines the relevant employee grouping for organizing purposes. If the Board were to readily depart from this approach, there would be no such certainty; and, the prospect that temporary minority dissatisfactions could be translated into fragmentation of an established unit, would simply encourage inter union rivalry and complicate the litigation where one union is seeking to displace another. Thus, there are real practical and administrative advantages to the rule that the existing bargaining structure should generally be preserved.

...

22. However, on the facts which these parties placed before us, none of the criteria which might support the carving out of the smaller unit are established. In this respect Local 586 bases its

argument in support of the smaller unit entirely on the fact that this unit is, by virtue of the statute, an appropriate bargaining unit, and since this is the unit that it as the applicant has chosen to apply for, the smaller unit should be found to be the appropriate unit for the purposes of this application. We do not agree.

23. Ultimately this situation is not so far removed from that which exists in *normal* displacement applications such that the basic principles which led to the Board establishing its mirroring policy (and the specific reasons for departing from the general policy in any particular case) should simply be set aside by virtue of subsection 158(2) and the applicant's preference for a smaller geographic area. All that subsection 158(2) does in these circumstances is deem the bargaining unit which Local 586 applied for to be within a subset of bargaining units all of which are an appropriate bargaining unit. It is from this subset that the Board must ultimately determine the bargaining unit which it finds to be the appropriate unit. In the normal course this would be the one which the applicant has chosen to apply for. However, as noted above where there is an existing bargaining unit there must be some clear and cogent reason(s) for finding some other unit to be the appropriate one, even though the Board would, in all likelihood, find the bargaining unit applied for to be the appropriate one but for the existing bargaining unit. No such cogent reasons exist here and the sole result of the Board finding the applicant's smaller unit to be the appropriate one would be to fragment the existing bargaining pattern which was established by way of the certificate issued to Local 353 and which has thereafter been in place for approximately four years as a result of the collective agreement.

24. In this respect this situation is quite separate and distinct from construction industry applications for certification relating to the ICI sector and involving the carving out of different bargaining units from larger pre-existing units, something which the Board has generally allowed. The rational for the Board departing from the mirroring policy in applications involving the ICI sector was made quite clear in, for example, *Reitzel Heating & Sheet Metal Ltd.*, [1988] OLRB Rep. December 1310 where the Board stated:

> 27. We concur with the general proposition that in the exercise of the Board's discretion, in a displacement application the policy of the Board has been that the appropriate bargaining unit is the unit held by the incumbent trade union. In the absence of some clear and compelling reasons why this long standing policy of the Board ought to be disregarded, we would not lightly set aside or interfere with this well established policy. We are of the view that such clear and compelling reasons do exist in the circumstances of this case where we are concerned with province-wide bargaining in the ICI sector of the construction industry. In our opinion, the Board's general policy on displacement applications is not necessarily applicable in the ICI sector of the construction industry in light of the statutorily compelled scope of the incumbent's unit.
>
> 28. In an application for certification by way of displacement, the Board has stated that the established bargaining structure is prima facie appropriate - particularly in those instances where there has been a long, well established collective bargaining relationship. It is difficult to envisage any better evidence of the "appropriateness" of a bargaining unit than the situation where the parties to a collective agreement have developed both the bargaining unit and the bargaining structure which have proven viable over a period of time. In the present circumstances however, because the incumbent is an A.B.A., when it organizes employees in the ICI sector of the construction industry, the scope of

its bargaining unit and its rights to represent employees in the ICI sector, and its bargaining structure with Reitzel have been predetermined by the legislature. In the ICI sector, A.B.A.'s are prevented from organizing certain employees, because of the limitations found in their provincial designations. (See Ninco Construction Ltd., [1982] OLRB Rep. Nov. 1692; Manacon Construction Ltd. [1983] OLRB Rep. March 407 and July 1104, Superior Plumbing and Heating Ltd., [1986] OLRB Rep. Nov. 1589; D.E. Witmer Plumbing and Heating Ltd., [1987] OLRB Rep. Oct. 1228.) Once organized by an E.B.A., employees are automatically plugged into the provincial agreement. Pursuant to the mandatory provisions of the Act, that collective agreement is a two-year agreement which expires bi-annually on the 30th day of April. We are of the view that where the legislation has, in essence, statutorily determined both the bargaining unit and the bargaining structure, the Board's policy that the incumbents' bargaining unit is prima facie appropriate, based as it is on the "history" of the collective bargaining relationship between the parties, need not necessarily prevail. The underlying assumption or rationale for the Board's displacement policy - the collective bargaining history of the parties, the implicit right of the parties to alter, extend or otherwise modify the bargaining unit to suit their needs - is not valid in instances where the incumbent is an A.B.A. or an E.B.A. and the raiding union is seeking to displace the incumbent's province-wide bargaining rights in the ICI sector.

29. In our opinion, the enactment of section 144 has both explicitly and implicitly restricted and fettered the Board's discretion to determine the appropriate bargaining unit when dealing with applications for certification in the ICI sector of the construction industry. The explicit fetters are found in the statutory language contained in subsection 1 to subsection 4 of section 144 and the manner in which those sections have been interpreted and consistently applied by this Board. The implicit fetters are found in both the statutory language, and the labour relations environment in which that language was originally enacted and subsequently amended, and the problems which the legislation sought to address. The legislative intent regarding province-wide bargaining in the ICI sector expressed and encompassed in the Act has led us to conclude that, where there are conflicts or inconsistencies between the Board's usual policies or practices and the scheme of construction industry certification and province-wide bargaining in the ICI sector, the latter should prevail. Before examining the scheme of application for certification in the ICI sector of the construction industry, we turn briefly to provide some historical background and labour relations context to those provisions. Both these aspects have had a considerable impact upon the policy considerations we have addressed and consequently upon the exercise of our discretion in determining the appropriate bargaining unit.

...

35. In our view, experience has shown that the current provisions relating to province-wide bargaining in the ICI sector of the construction industry have significantly alleviated the problems identified in the Franks Report. Although there are both proponents and detractors of the current system, it is our view that these provisions have indeed furthered harmonious relations between employers and employees and their trade unions. A primary policy consideration in the exercise of our discretion therefore has been to avoid results which are, or can be, harmful or detrimental to province-wide bargaining in the ICI sector. For this

> reason we have concluded that the present scheme of certifying trade unions in the construction industry which this Board has developed (in a manner consistent with the statute and the legislative intent as found in the statute) must prevail. Thus, where there is conflict between the Board's usual or normal application of section 144 to certification applications in the construction industry and the displacement policy, wherever possible, the former will take precedence.
>
> 36. The Board has interpreted section 144 as an exhaustive code applicable to all applications for certification in the construction industry brought before the Board. (see Clarence H. Graham Construction Limited, [1981] OLRB Rep. Sept. 1195 at paragraphs 6 and 8). Pursuant to that exhaustive code, a trade union which is an A.B.A. of a designated E.B.A. must bring its applications for certification under subsection 1 of section 144 if it relates to the ICI sector, or subsection 3 if it does not. A trade union which is not represented by a designated E.B.A. may bring an application under subsection 5 without reference to sector. In this latter instance the bargaining unit is normally defined as (1) all trades at work on the date of application, in (2) all sectors of the construction industry and (3) in a geographic area described by reference to a Board area.

25. Here the factors and considerations which the Board has identified as constituting *clear and compelling reasons* with respect to displacement applications in the ICI sector are simply not present. Subsection 158(2) of the Act deems the smaller bargaining unit which Local 586 applied for to be an appropriate one. However, as set out above, Local 586's unit is simply one of a number of appropriate units in contrast to the ICI sector, where the scope of the unit is explicitly compelled by the statute.

26. Further, in the ICI sector not only is the bargaining unit explicitly established by the statutory regime, but so to is the entire scheme of collective bargaining that must follow the granting of ICI bargaining rights. That is not the case, either explicitly or implicitly, in this situation. Here, there is simply no evidence establishing the existence of some pre-existing industry wide and multi/employer bargaining regime in Board Area No. 15 relating to the type of work which AGI engages in and which the scheme of the Act is designed to protect and promote. Had that been the case, for example if there were an accredited employer association relating to Local 586's non-ICI bargaining rights in Board Area No. 15, it might provide a basis for favouring the smaller unit as to do so could, at least arguably, represent the rationalization of, and support for, collective bargaining patterns established on an industry-wide basis within the specific geographic area applied for. However, since it is not the case, allowing for the smaller unit would simply serve to further fragment the existing pattern of collective bargaining rather than placing it within some broader, although area specific, industry wide framework.

27. Accordingly, based on all of the reasons set out above, it is now possible to definitively deal with this application as follows.

28. The Board finds that this application does not relate to the industrial, commercial and institutional sector of the construction industry referred to in section 126 of the Act.

29. The Board further finds that all journeymen and apprentice electricians employed by AGI Traffic Technology Inc., in all sectors of the construction industry in the Province of Ontario, excluding the industrial, commercial, institutional sector, save and except non-working foremen and

persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

30. On the basis of only the information provided in the application (including the information and membership evidence filed by the applicant) and the information provided under subsection 128.1(3) of the Act, and the agreement of the parties with respect thereto, the Board is satisfied that less than forty per cent of the individuals in the bargaining unit were members of the union at the time the application was made.

31. Therefore pursuant to the provision of subsection 128.1(7) this application is dismissed.

32. The responding party is directed to post copies of this decision immediately, in a conspicuous location(s) where it is likely to come to the attention of the employees affected by this application. These copies must remain posted for a period of 30 days.

2564-08-R Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Avcon Construction Inc.**, Responding Party

Certification – Construction Industry – Membership Evidence – Reconsideration – The employer sought reconsideration of a Board decision granting certification to the applicant – The employer alleged that one membership card filed by the union was forged, thus undermining the credibility and validity of all the union's membership evidence – The union asked the Board for permission to disclose whether the individual had signed a card – The Board held that s. 119(1) of the Act did not preclude a party with knowledge of membership from disclosing it outside the parameters of a Board proceeding – The confidentiality principle established by s. 119(1) is not absolute and when the authenticity of membership evidence is challenged by a specific allegation of forgery and there is no other reasonable or practical method of determining the issue, the Board ought to grant consent to disclose – Following inspection of the membership document, the employer withdrew its request for reconsideration

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Lorne A. Richmond* and *Sean Marlow* for the applicant; *David L.W. Francis* and *Avi Gottlieb* for the responding party.

DECISION OF THE BOARD: March 6, 2009

1. The Board, differently constituted, by decision dated January 26, 2009 listed this request for reconsideration for hearing. The request for reconsideration made by the responding party seeks revocation of the two certificates issued to the applicant under sections 128.1(13) and 128.1(24)(b) of the *Labour Relations Act, 1995*, S. O. 1995, c. 1 as am. (the "Act") in its decision dated November 27, 2008. The sole basis for the reconsideration request is the assertion that one piece of membership evidence filed by the applicant was a forgery.

2. The responding party filed a written statement signed by Jay Deming, one of its employees who was in the bargaining unit on the date the application for certification was filed, in support of its claim that if the applicant had filed membership evidence purporting to have been signed by Mr. Deming, it was a forgery and should cause the Board to disregard all of the membership evidence filed by the applicant. The written statement from Mr. Deming substantiates the responding party's allegation set out at paragraphs 10 and 11 of Schedule A to its reconsideration request:

> 10. Avcon has been approached by Mr. Jay Deming ("Deming"), a labourer on the St. Catharine's site. Deming has strongly objected to the Union application and has insisted that he rejected the Applicants [sic] advances. A copy of a written statement Deming has provided is attached hereto as Exhibit # 1.
>
> 11. If a card was provided to the Board with respect to Deming, based on his statement attached, it would appear that the card may, in fact, have been a forgery. This is of great concern as the entire system of certification under Section 128.1 is based on accepting the integrity of the cards at face value. If evidence on behalf of Deming has been provided to the Board, there is substantial reason to question that integrity in this matter in light of the analysis of the numbers and Deming's assertions. It also potentially raises concerns about all membership evidence that may have been provided in this matter.

3. Neither the applicant nor the Board disclosed to the responding party whether the applicant had filed membership evidence in respect of Mr. Deming in light of section 119(1) of the Act. Nevertheless, the fact the issue raised by the responding party caused the Board to schedule a hearing to determine the request for reconsideration would obviously cause the responding party to conclude that the applicant had done so.

4. The applicant, by letter dated March 4, 2009, sought the Board's consent to disclose whether Mr. Deming had signed a membership document, and if he had done so, to provide a copy of that document to the responding party. That request was renewed by counsel at the commencement of the hearing.

5. In my view, the applicant did not require the Board's consent either to disclose whether it had filed membership evidence on behalf of Mr. Deming or to provide the responding party with a copy of that document it had in its possession. See *Danny Bevilacqua*, [2004] OLRB Rep. Sept./Oct. 996 (September 7, 2004) (application for reconsideration dismissed [2004] OLRD No. 4628) (November 23, 2004) in which the Board wrote at 999:

> 17. ...the prohibition against disclosure contained in section 119(1) is limited to "records produced in a proceeding before the Board" and does not extend to the membership records a trade union may maintain that are not produced in a Board proceeding. There is nothing in the Act that prevents the disclosure of information concerning whether someone is or is not a member of a union. It is apparent from the clause in section 119(1) stating that the membership documents produced in the proceeding are "for the exclusive use of the Board and its officers" that section 119(1) is aimed at shielding the Board's review of membership documents from scrutiny. To adopt the interpretation suggested by

> the applicants would result in a situation where someone would be in violation of the Act by disclosing a membership document that had been filed with the Board but would not violate the Act if the membership document disclosed had not been used in a Board proceeding.
>
> 18. The purpose of section 119(1) is to allow the Board to act on documentary evidence of union membership in a Board proceeding when that membership evidence is relevant to a determination in that proceeding without permitting any party to the proceeding to examine that evidence. In the absence of section 119(1), an employer or rival trade union in a certification proceeding would be entitled to review the membership evidence filed in support of a union's application for certification. ...
>
> 20. The confidentiality of membership evidence filed with the Board does not, in my view, extend beyond the Board so as to prevent persons or unions who may come into the possession of membership documents or records that had, at one time, been produced in a Board proceeding from disclosing them to third parties. ...

6. The parties also asked the Board at the commencement of the hearing to provide the responding party with the original membership document the applicant had filed with its application purported to have been signed by Mr. Deming so that the responding party might inspect it.

7. As required by section 119(1) of the Act, the Board is scrupulous in maintaining the confidentiality of membership evidence filed with it and in ensuring an individual when testifying is not, except in unusual circumstances, required to disclose whether he or she is a union member or wishes to be represented by a union. Section 119(1) of the Act provides:

> The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union.

The confidentiality principle established by section 119(1) of the Act is not absolute. The fact of membership and membership documents filed with the Board can be disclosed, with the consent of the Board. In *Hyundai Auto Canada Inc.*, unreported, Board File No. 0461-91-R, decision dated January 16, 1995, Q.L. cite [1995] OLRD No. 5449 the Board at paragraph 33 commented upon the employer's request for information about the overlap of signatories to a petition against the union and those on a subsequent statement reaffirming support for the union:

> We accept that there may be times when the fact that information is not disclosed to the parties under this provision [section 119(1)] may hamper the presentation of their cases. However, former section 111(1) [now 119(1)] gives explicit statutory protection to this information, and we do not think that this fact alone can be determinative. In reviewing each of the five requests made by counsel in this regard, which were essentially variations on the same theme, the Board considered the purpose behind the statutory provision and carefully balanced it

> with the need for parties to prepare and present their cases. Our decisions in this regard maximized the amount of information available to the parties while still respecting the importance of confidentiality reflected in former section 111(1). We note as well that any disadvantage occasioned by the lack of information applied to all parties, and not just the employer.

8. It seems to me that where the authenticity of the membership evidence is challenged by a clear and specific allegation of forgery and there is no other reasonable or practical method for determining the issue, the Board ought to consent to the fact of membership and the membership evidence being disclosed, and where appropriate, provided to the parties for their inspection.

9. In this case, given the nature of the allegation made by the responding party, I was satisfied the responding party should be permitted, before the hearing resumed, to examine the actual membership document filed by the applicant that was purported to have been signed by Mr. Deming.

10. When the hearing reconvened, the responding party advised the Board that after it had inspected the membership document it received from the Board and made further enquiries, it considered it appropriate to withdraw its request for reconsideration.

11. The responding party's request for revocation of the Board's certificates and reconsideration of the Board's November 27, 2008 decision is withdrawn at the request of the responding party.

1048-07-HS; 0255-08-HS Blue Mountain Resorts Limited, Applicant v. Richard Den Bok, Inspector and Ministry of Labour, Responding Parties

Health and Safety - Blue Mountain Resorts filed two appeals of an Inspector's orders for production of documents relating to guests injured at the Resort and to the Resort's failure to notify the Minister of a fatal injury to a guest under section 51(1) OHSA – On the question of document production, the Board accepted the Resort's argument that the documents regarding injured guests were created in contemplation of litigation and therefore could not be subject to a production order under subsection 54(1) of the OHSA – The orders relating to the production of these documents were rescinded – On the question of section 51(1) notice, the issue was whether the Resort was obliged to notify the Minister that a non-worker was fatally injured at the Resort when, at the time of the injury, no workers were present – The Board determined that the word "people" in section 51(1) includes non-workers – Further, the Resort continued to be considered a "workplace" even at times when there were no workers present – Therefore, the Resort was responsible for reporting the fatality – Appeal of the section 51(1) order was dismissed

BEFORE: *Diane L. Gee*, Alternate Chair.

APPEARANCES: *John Olah* for the applicant; *David McCaskill, Richard Den Bok* and *Joe O'Grady* for the responding parties; *David Parks* for the Blue Mountain Joint Health and Safety Committee.

DECISION OF THE BOARD: March 23, 2009

1. These are two appeals of an Inspector's Orders pursuant to subsection 61(1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended (the "Act") by Blue Mountain Resorts Limited ("Blue Mountain").

2. The first three Orders under appeal were issued following Field Visit No. 5389779 dated May 24, 2007. They are as follows:

> 8. An inspector may, for the purposes of carrying out his or her duties and powers under this act and the regulations, (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same. THE EMPLOYER IS REQUIRED TO PROVIDE COMPLETED NATIONAL SKI AREA ACCIDENT REPORTS FOR PERSONS WHO HAVE BEEN INJURED AT THIS WORKPLACE SINCE DECEMBER 2006. COMPLY FORTHWITH. (THIS IS A CONFIRMATION OF VERBAL REQUIREMENT ISSUED TO THE EMPLOYER AT 3:00PM MAY 24, 2007)
>
> 9. No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his or her duties under this act or the regulations. THE EMPLOYER FAILED TO FURNISH COMPLETED NATIONAL SKI AREA ACCIDENT REPORTS FOR INJURITES THAT HAVE OCCURRED TO PERSONS SINCE DECEMBER 2006, TO THE INSPECTOR AS REQUIRED.
>
> 10. No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his or her duties under this act or the regulations. EMPLOYER REPRESENTATIVE ALVIN WEATHERALL FAILED TO PROVIDE WHEN REQUIRED BY AN INSPECTOR, TO FURNISH NATIONAL SKI AREA ACCIDENT REPORTS THAT OCCURRED TO PERSONS INJURED AT THE WORKPLACE SINCE DECEMBER 2006

For ease of reference these Orders are referred to herein as Orders 8, 9 and 10.

3. The remaining two Orders under appeal were issued following Field Visit No. 5498850 dated March 27, 2008. They are as follows:

> 1. Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe. THE EMPLOYER FAILED TO NOTIFY AN INSPECTOR OF THE FATAL INJURY TO A PERSON WHICH OCCURRED AT THE BLUE MOUNTAIN INN ON DECEMBER 24, 2007. COMPLY FORTHWITH.
>
> 2. An inspector may, for the purposes of carrying out his or her duties and powers under this act and the regulations, (c) require the production of any drawings,

> specifications, licence, document, record or report, and inspect, examine and copy the same. THE EMPLOYER SHALL PROVIDE THE FIRST AID REPORT AND OTHER REPORTS RELATING TO THE DROWNING DEATH OF A PERSON WHICH OCCURRED ON DECEMBER 24, 2007.

For ease of reference these Orders are referred to herein as Orders 1 and 2.

4. The Orders under appeal fall into two categories.

5. Orders 2, 8, 9 and 10 relate to the Inspector's requirement that Blue Mountain produce to the Inspector reports created following a guest accident. Orders 8, 9 and 10 require Blue Mountain to produce to the Inspector documents known as "National Ski Area Accident Reports" (referred to herein as "Accident Reports") and find Blue Mountain and Alvin Weatherall to have failed to provide the Accident Reports as required. Order 2 was issued after a guest drowned at Blue Mountain resort and requires Blue Mountain to produce any reports prepared by Blue Mountain in connection with this drowning. Blue Mountain appeals Orders 2, 8, 9 and 10 on the basis that the reports are protected by litigation and/or solicitor client privilege. In the alternative, Blue Mountain argues that the Inspector does not have the jurisdiction to order the production of documents that relate to guests and not workers.

6. Order 1 is made pursuant to subsection 51(1) of the Act and finds Blue Mountain to have failed to notify the Ministry of Labour of a guest drowning that occurred on December 24, 2007, and orders Blue Mountain to comply forthwith. Blue Mountain appeals Order 1 on the basis that an Inspector does not have the jurisdiction to require Blue Mountain to notify the Ministry of the incident in question.

7. During the course of the hearing, there was evidence led by Blue Mountain in support of what it contends was improper behaviour on the part of the Inspector. As I indicated at the hearing, such allegations are to be raised with the Ministry of Labour. The Ontario Labour Relations Board has no jurisdiction concerning the conduct of Ministry of Labour Inspectors.

Orders 2, 8, 9 and 10: Production of Reports

8. As indicated above, Orders 8, 9 and 10 all require the production of documents known as National Ski Area Accident Reports. A National Ski Area Accident Report is a form that is completed when an accident occurs at the resort. The form records details of the incident such as what occurred, where, when, and how. It includes a description of the weather conditions and the identity of any witnesses. The form is forwarded to Blue Mountain in-house counsel and retained by her in her office. Alvin Weatherall, Vice-President of Resort Services at Blue Mountain, testified that the forms are completed in order to be used by counsel in the event of litigation arising out of the incident. It is not clear from the evidence what reports were created by Blue Mountain when a guest drowned in its pool on December 24, 2007. However, the evidence given by Mr. Weatherall is that the only reports completed following this incident were completed for the purpose of providing them to counsel to be used in the event of litigation arising out of the incident.

9. The evidence adduced by Blue Mountain establishes that the reports covered by Orders 2, 8, 9 and 10 were created for the purposes of enabling Blue Mountain counsel to prepare, if necessary, for any litigation that might arise as a result of the incident. In the case of *Ellis-Don Construction*

Ltd. [1994] O.O.H.S.A.D. No. 27 (September 7, 1994) concerning an appeal pursuant to section 61 of the Act, the adjudicator determined that documents protected by privilege are not subject to production pursuant to an Inspector's Order. After hearing the evidence and argument of Blue Mountain with respect to Orders 2, 8, 9 and 10, the Ministry of Labour did not challenge Blue Mountain's assertion that the reports in question were protected by privilege. Further, the Ministry of Labour acknowledged that there is no provision in the Act that overrides the operation of privilege.

10. Having regard to the evidence heard, it is my determination that the reports to which Orders 2, 8, 9 and 10 relate were created primarily for the purpose of permitting counsel to prepare for anticipated litigation and, as such, are protected by privilege. There is nothing in the Act that gives an Inspector the power to order the production of documents that are privileged. As a result, privileged documents cannot be the subject of a subsection 54(1) order. Orders 2, 8, 9 and 10 are hereby rescinded.

Order 1: Section 51 Notice

11. On December 24, 2007, a guest of Blue Mountain drowned in a swimming pool at the resort. The pool in question was not supervised by Blue Mountain employees. Order 1 provides that Blue Mountain failed to notify the Ministry of Labour of this incident as required by subsection 51(1) of the Act.

12. Blue Mountain asserts that subsection 51(1) does not apply as the incident in question did not involve a worker and/or did not occur in a workplace. The issue for determination is whether subsection 51(1) of the Act requires an employer to notify the Ministry of Labour when a non-worker is critically injured in an area where there are, at the time of the injury, no employees present.

13. From Blue Mountain's perspective, the issue has broader implications. During the peak ski season any number of its ski guests may suffer broken legs or arms during a single day. A broken leg or arm falls within the definition of "critical injury" and, according to the Ministry of Labour's interpretation of subsection 51(1), would have to be reported to an Inspector. The difficulty from Blue Mountain's perspective is, if an injury has to be reported under subsection 51(1) of the Act, subsection 51(2) of the Act also applies. According to subsection 51(2), no "....wreckage, article or thing at the scene..." of an accident can be carried away until permission to do so has been given by an Inspector. The operation of subsection 51(2) would potentially result in Blue Mountain being required to barricade off every ski run where a guest breaks a bone until such time as an Inspector has been notified and permission to clear the accident site obtained.

14. It is useful to begin with a reference to the relevant provisions of the Act.

> **51.** (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.
>
> (2) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,

(a) saving life or relieving human suffering;

(b) maintaining an essential public utility service or a public transportation system; or

(c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector.

15. The terms "worker", "workplace" and "employer" are defined in the Act as follows:

"employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;

"worker" means a person who performs work or supplies services for monetary compensation but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program;

"workplace" means any land, premises, location or thing at, upon, in or near which a worker works.

16. A "critical injury" is defined in the CRITICAL INJURY - DEFINED, R.R.O. 1990, Reg. 834 as follows:

1. For the purposes of the Act and the Regulations,

" critically injured" means an injury of a serious nature that,

(a) places life in jeopardy,

(b) produces unconsciousness,

(c) results in substantial loss of blood,

(d) involves the fracture of a leg or arm but not a finger or toe,

(e) involves the amputation of a leg, arm, hand or foot but not a finger or toe,

(f) consists of burns to a major portion of the body, or

(g) causes the loss of sight in an eye.

The term "person" is not defined in the Act.

17. During the course of the hearing, the Board heard evidence from four witnesses. Blue Mountain called Mr. Weatherall and Bruce Hanes, President of the Ontario Snow Resorts Association. The Ministry of Labour called Richard Den Bok, the Inspector who issued the Orders under appeal, and Joe O'Grady, Provincial Specialist with the Industrial Health and Safety Program of the Ministry of Labour.

18. The evidence given by each of the witnesses that is relevant to my determination of Blue Mountain's appeal of Order 1 can be briefly summarized as follows.

19. Mr. Weatherall testified that Order 1 relates to an incident where a guest of Blue Mountain was found dead in the unguarded, indoor swimming pool. When the guest was first found, a defibrillator was used to try and revive him. There was no electric signal and, for that reason, Blue Mountain thought that the guest had suffered a heart attack. Blue Mountain was later told by the police that the guest had drowned. Blue Mountain did not report the incident to the Ministry of Labour for a number of reasons including the fact that Blue Mountain believed the individual had died of natural causes.

20. Mr. Weatherall testified that Blue Mountain did not believe that it had a reporting obligation to the Ministry of Labour pursuant to subsection 51(1) of the Act where a guest was involved. Where a guest is injured in the course of participating in a recreational activity, Blue Mountain does not see this as raising an issue of employee safety. Given that the purpose of the Act is to protect the safety of workers, Blue Mountain does not understand the Act to require the reporting of injuries to non-workers.

21. Mr. Weatherall provided an overview of the individuals employed by Blue Mountain in its ski operations. Blue Mountain employs approximately 1750 staff at its peak busy season. Amongst those that it employs are: lift operators at both the top and the bottom of the lifts; ski patrollers both volunteer and paid; and ski and snow board instructors.

22. Mr. Weatherall also provided an overview of the number of "incidents" occurring that involved guests. At Blue Mountain, there are approximately 1.5 incidents per every 1000 visitors. The industry average is 2 incidents per 1000 visitors. During the 2007 – 2008 ski season, there were 715,000 visitors to Blue Mountain. The peak ski times are: the Christmas Holidays; Saturdays in February; and March Break. On a Saturday in February there are approximately 16,000 visitors. On a Sunday in February there are approximately 10,000 visitors. On the same days there would be approximately: 75 ski patrollers; 300 instructors; and 50 lift attendants working at Blue Mountain.

23. Mr. Weatherall testified that ski patrollers are not always in a position to determine if a person has suffered a fracture or not. When a ski patroller suspects that a skier has suffered a fracture, the ski patroller will handle the injured skier on the assumption that they have suffered a fracture. Often Blue Mountain will not even know if the person suffered a fracture or not. The hospital does not share any information with Blue Mountain.

24. Based on the statistic of there being 1.5 incidents per 1000 visitors, Mr. Weatherall estimated that, on a Saturday in February there could be as many as 24 critical injuries that would have to be reported to the Ministry of Labour and 24 ski runs that would have to be barricaded off or closed pending release by an Inspector. On a Sunday in February, the number would be 15. Thus,

over the course of one of the busiest weekends of the season, Blue Mountain could be faced with 39 instances where its runs were closed or narrowed.

25. Mr. Weatherall testified that Blue Mountain has 36 ski runs. In his view, if Blue Mountain was prohibited from clearing the site of a ski accident each time a guest skier suffered a critical injury, the result would be that additional hazards, in the form of barricades and/or closed runs, would be created. Mr. Weatherall testified that the same concerns exist in connection with the summer activities, such as mountain biking, that take place at Blue Mountain.

26. Mr. Weatherall further testified that he does not believe that other industries such as retail stores are required to report customer injuries to the Ministry of Labour. Mr. Weatherall related an incident where, after he was told that Blue Mountain had to report customer injuries, Blue Mountain called the Ministry of Labour 1-800 number to report a guest injury and was told by the person who took the call that only employee injuries had to be reported.

27. Under cross-examination, Mr. Weatherall agreed that his boss, Gord Canning, sent a communication to MPP Jim Wilson contesting Mr. Den Bok's position that Blue Mountain was required to report when a guest suffered a critical injury. While Mr. Weatherall was not able to identify whether an email shown to him dated April 27, 2007 from Mr. Canning to Minister Wilson was the communication that was sent, Mr. Weatherall agreed that Mr. Canning asked Minister Wilson to speak with the Minister of Labour about Mr. Den Bok's interpretation of section 51(1) and why Blue Mountain was required to provide information concerning critical injuries to guests. Mr. Weatherall testified that Blue Mountain received a response to Mr. Canning's communication from the Minster of Labour or his assistant and that such response indicated that critical injuries to patrons and workers had to be reported.

28. Bruce Haynes was called as a witness by Blue Mountain. Mr. Haynes has been with the Ontario Snow Resorts Association since 2003. He is currently the President. The members of the Ontario Snow Resorts Association consist of operators of alpine and cross country ski resorts as well as ski industry suppliers. Many of its members operate year round, offering golfing, mountain biking, tennis, hiking and/or zip line activities during the summer months.

29. Mr. Haynes testified that there are industry concerns about the prospect of having to report critical injuries to customers. Mr. Haynes testified that the ski patrollers are not qualified to diagnose an injury. If a guest complains of an ankle injury, the guest's boot is not removed. The ski patrol has no way of knowing the severity of the injury.

30. According to Mr. Haynes, there were approximately 7000 incidents at all ski resorts in Ontario in the 2007- 2008 ski season. There is no way of determining how many of these "incidents" involved broken legs or arms or were otherwise of sufficient severity to meet the definition of "critical injury" in the Act. According to Mr. Haynes, given that a ski patroller is not able to diagnose injuries, any time that a critical injury was suspected, the matter would have to be reported to the Ministry of Labour. According to Mr. Haynes, every suspected critical injury would have to be reported because, if the ski resort failed to report an incident, and it subsequently turned out that the guest had broken their leg, the ski resort could face prosecution.

31. Mr. Haynes testified that, once the ski resort had reported the injury, the resort would then be required to fence off the area and preserve the accident area. This would make the hill very

dangerous and make it very difficult for the resort to operate. Mr. Haynes testified that this would lead to guests becoming unhappy and dissatisfied. Ski resorts would see a loss in business. Mr. Haynes speculated that the same result would obtain in the summer months if golf courses, mountain bike paths etc. were closed off or cordoned off any time a guest was injured. Mr. Haynes indicated that, in his view, Ontario tourism would suffer.

32. The Inspector who issued the Orders under appeal, Richard Den Bok, was called as a witness for the Ministry of Labour. Mr. Den Bok testified that he talked to personnel at Blue Mountain about the need to report critical injuries to workers and non-workers as early as his first visit in 2006. Mr. Den Bok identified an email dated April 27, 2007 written by Gord Canning of Blue Mountain to MPP Jim Wilson contesting Mr. Den Bok's position that Blue Mountain was required to report when a guest suffered a critical injury. In the email, Blue Mountain requests that Minister Wilson speak with the Minister of Labour about Mr. Den Bok's interpretation of section 51(1). Minister Wilson is asked to obtain clarification as to why the Ministry would require Blue Mountain to provide guest information. Mr. Den Bok testified that he assisted with the drafting of a response to be sent to Blue Mountain from the Ministry of Labour. The response sent indicated that Blue Mountain was obligated to report critical injuries to guests.

33. Mr. Den Bok testified that he and Mr. Weatherall had a discussion about Blue Mountain's obligations when a guest is injured and Blue Mountain does not know if the injury suffered is a "critical injury". Mr. Den Bok testified that he advised Mr. Weatherall that, if Blue Mountain is not aware that a critical injury has been suffered, there is no reporting obligation. Mr. Den Bok further described a conversation he had with Mr. Weatherall wherein Mr. Weatherall expressed concern about the length of time the Ministry would take to respond to notification of an injury. Mr. Den Bok testified that he informed Mr. Weatherall that an Inspector would likely release the accident site over the phone. Mr. Den Bok testified that, in the prior year, all ski resort accident scenes, with the exception of one, had been released over the phone. Mr. Den Bok testified that Mr. Weatherall was told that, where the Inspector had to attend at the site, the response time would be within a couple of hours. Mr. Den Bok further testified that other ski resorts were being told that the reporting requirement in the Act included incidents where a guest suffered a critical injury.

34. Mr. Den Bok agreed that the Ministry's requirement that ski resorts report guest critical injuries was new. Mr. Den Bok testified that the change was due to a number ski resorts appearing in the high risk category. Mr. Den Bok further testified that he has required a number of other employers, such as a retail operation, to report customer injuries. Mr. Den Bok testified that, in his view, a location is a "workplace" when there is a worker present. If there is no worker present at the place then it is not a "workplace" and the reporting obligation does not arise.

35. The Ministry of Labour also called Joe O'Grady, a Provincial Specialist with the Industrial Health and Safety Program of the Ministry of Labour, to testify. Mr. O'Grady testified that one of the purposes of section 51 is to bring workplace hazards that might result in injuries to workers to the attention of the Ministry. The Ministry can then work proactively to prevent worker injuries. Mr. O'Grady testified that in order for section 51 to apply, the injury must occur at a "workplace". Some workplaces travel with a worker. For example, an ambulance driver's workplace is wherever he or she happens to be working. Some workplaces are fixed. For example, a retail store is a fixed workplace. Mr. O'Grady testified that, where the workplace is fixed, the entire property is a "workplace" for the purposes of section 51.

36. It is Blue Mountain's position that the Act must be interpreted in accordance with the mandate of the Ministry of Labour, the purpose of the Act and in accordance with the case law. Relying on excerpts from the Ministry's website as well as a number of decisions that have considered the purposes of the Act, Blue Mountain submits that the Ministry's mandate and the Act's purpose is restricted to the safety of workers in the workplace (see *R. v. Wyssen*, [1992] O.J. No. 1917 at para. 16; *R. v. Timminco Ltd.*, [2001] O.J. No. 1443 at para.22; and *Ontario (Ministry of Labour) v. Hamilton (City)*, [2002] O.J. No. 283 at para. 16). In the submission of Blue Mountain, the Act does not govern outside parties and the Act was never intended to look at Blue Mountain's relationship with its customers.

37. In the submission of Blue Mountain, the case of *R. v. Port Colborne (City)*, [1992] O.J. No. 2555 establishes that a single place can have dual definitions. Lake Erie's beaches were found to be a workplace when firefighters were present engaged in a rescue attempt. At other times, the beaches would be a recreational facility. Relying on the *Port Colborne* decision, Blue Mountain submits that, where recreational activities are being undertaken without the presence of workers, and where no work is being done, it is not a workplace and accordingly there is no duty to report under subsection 51(1).

38. Blue Mountain submits that, to conclude that subsection 51(1) of the Act grants the Ministry the jurisdiction to require Blue Mountain to report all of the instances where a person is critically injured while on its resort property is a result that conflicts with general principles of statutory interpretation and leads to absurd results.

39. Blue Mountain argues that if section 51 is interpreted in the manner advocated by the Ministry of Labour, every single endeavour in Ontario would be required to so report. This would lead to a phenomenal number of reports to the Ministry of Labour with an equally phenomenal number of accident sites having to be preserved until released by an Inspector. Blue Mountain argues that such an interpretation would require the Toronto Maple Leafs to report a critical injury suffered by a player during a game and further require the game to be stopped in order to preserve the accident scene until such time as it was released by an Inspector. Based on industry statistics, Blue Mountain submits that it could be required to shut down numerous areas across its 36 trails during a normal weekend. In the submission of Blue Mountain, the negative effects of such a situation to its business would be devastating. In addition, it would greatly increase the risk to skiers using those trails.

40. Blue Mountain relies on the following quote from the Court of Appeal's decision of *Ontario (Minister of Transportation) v. Ryder Truck Rental Canada Ltd.*, [2000] O.J. No. 297 as setting out the proper approach to the interpretation of statutory provisions:

> The modern approach to statutory interpretation calls on the court to interpret a legislative provision in its total context… The court's interpretation should comply with the legislative text, promote the legislative purpose, reflect the legislature's intent, and produce a reasonable and just meaning. [Sullivan, Driedger on the Construction of Statutes, 3rd ed. (Toronto: Butterworths, 1994), at p. 131]. The Supreme Court has repeatedly affirmed this approach to statutory interpretation, most recently in *R. v. Gladue*, 1999 CanLII 679 (S.C.C.), [1999] 1 S.C.R. 688 at p. 704, where Cory and Iacobucci JJ. wrote:
>
> > As this Court has frequently stated, the proper construction of a statutory provision flows from reading the words of the provision in their grammatical

> and ordinary sense and in their entire context, harmoniously with the scheme of the statute as a whole, the purpose of the statute, and the intention of Parliament.

41. Blue Mountain argues that the term "person" in subsection 51(1) must be interpreted to mean "worker".

42. In the alternative, Blue Mountain argues that the term "workplace" has to mean a place were a worker is present in the area. In support of this argument Blue Mountain relies on the fact that workplace is defined as "any land, premises, location or thing at, upon, in or near which a worker works". In the submission of Blue Mountain, the use of the word "works" means that someone must be present and working at the time in order for it to be a "workplace". In Blue Mountain's submission, a worker was not present when the guest drowned in the pool and hence the pool was not a "workplace". Blue Mountain, addressing its broader concern, argues that if a guest falls at the top of a lift where a lift attendant is working that would constitute a workplace, however, when a guest falls on a ski hill there is no "worker" present at the location of the injury and hence that place is not a "workplace". In the submission of Blue Mountain, facilities can have two purposes; they can be a workplace and a recreational facility. Absent the act of someone "working" there is no workplace.

43. David Parks, a representative of the Blue Mountain Joint Health and Safety Committee attended throughout the hearing. Mr. Parks made very brief submissions. He advised that the Joint Health and Safety Committee agreed with the position taken by Blue Mountain. He stated that the Committee did not believe the reporting of guest injuries would better protect Blue Mountain employees.

44. The Ministry of Labour argued that the cases relied upon by Blue Mountain all indicate that the Act is remedial public welfare legislation that was enacted for the protection of the public at large and more particularly workers. In the Ministry's submission, there is overwhelming case authority that such legislation is to be interpreted broadly so as to ensure that its objectives are achieved. The Ministry refers to the *R. v. Hamilton (City), supra,* decision wherein Sharpe, J.A. states at paragraph 43:

> The *OHSA* is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers. When interpreting legislation of this kind, it is important to bear in mind certain guiding principles. Protective legislation designed to promote public health and safety is to be generously interpreted in a manner that is in keeping with the purposes and objectives of the legislative scheme. Narrow or technical interpretations that would interfere with or frustrate the attainment of the legislature's public welfare objectives are to be avoided.

45. The Ministry submits that by urging a narrow interpretation of subsection 51(1), Blue Mountain is taking the opposite approach. The Ministry submits that Blue Mountain's interpretation of "workplace", with its requirement that a worker be present when the injury occurs, is a very narrow definition that is not in keeping with the purposes of the Act. By way of example, the Ministry submits that a construction site does not cease to be a workplace at night when the workers have gone home or on a rainy day when no one is working. Similarly, a shop floor does not cease to be a workplace when all of the employees are at lunch in the lunch room.

46. The Ministry argues that subsection 51(1) clearly uses the word "person" as opposed to "worker". In the Ministry's submission, "person" is a broader category of people than the term "worker" and must be given its commonly understood meaning of referring to all people. It must be assumed that the Legislature meant what it said when it used the term "person".

47. In the submission of the Ministry the term "person" was used because, where any person is critically injured in a workplace, it is logical to assume that the same conditions that resulted in a critical injury to that person might also affect workers. Looking at the facts of the incident in issue, a patron drowned in a Blue Mountain pool. While no Blue Mountain employee was present in the pool area at the time of the drowning, the Ministry submits that Blue Mountain employees go into the pool area for a number of reasons, including cleaning the pool. At the time the guest was discovered drowned in the pool, the cause of his death was unknown. The guest's death could have been caused by any number of hazards, such as being overcome by chemical fumes, that any employee entering the area would also be exposed to. The reporting of the guest drowning serves to enable the Ministry to ensure that there is no hazard present that could present a risk to the health and safety of workers. In the submission of the Ministry, the fact that the pool is visited by workers in the common or normal course of their duties makes it a "workplace". In addition, the Ministry asserts that the pool would be a workplace as it was "near" the location where a worker works.

48. In the Ministry's submission, where workers are vulnerable to the same hazards and risks as guests, it is not an absurd result for an employer to be required to report critical injuries to guests. If workers go in or near places where an incident has occurred resulting in a non-worker suffering a critical injury, the workers are equally at risk. The reporting of the non-worker injury serves to enhance the protection of workers. The Ministry submits that, to interpret subsection 51(1) of the Act as narrowly as Blue Mountain urges, would lead to less worker safety.

49. The Ministry submits that Blue Mountain has offered no authority in support of its narrow definition of "workplace". Blue Mountain has not, for example, produced Hansard transcripts to establish the Legislature's intention. As such, the Ministry argues that the clear language of the provision must be given its effect. The Ministry does not dispute that a workplace can have dual characterizations; however, if one of those characterizations is that it is a workplace, the Act applies.

50. In reply, Blue Mountain submits that, where workers and non-workers intercept, the Ministry's jurisdiction is limited to workers. Blue Mountain contends that, otherwise, the Minister is inserting itself in an area that is not within its purpose or mandate. Blue Mountain asserts that the Ministry's interpretation leads to an absurd result that is not in keeping with the intent of the legislation. Blue Mountain says that the Ministry led no evidence that it needs employers to report injuries to non-workers in order to protect worker safety and that it is speculation that such reporting would impact on worker safety. In the submission of Blue Mountain, it is only where the risk of injury extends to a worker that a reporting obligation arises and, if there are no workers in the area when a non-worker is injured, the area is not a workplace and there is no reporting obligation.

Decision

51. The quote set out above from *R. v. Hamilton (City), supra,* is but one example of many court and adjudicative decisions where the remedial nature of the *Occupational Health and Safety Act* has been recognized.

52. In the case of *R. v. Timminco Ltd., supra,* the Ontario Court of Appeal stated as follows:

> 22. The *Occupational Health and Safety Act* is a public welfare statute. The broad purpose of the statute is to maintain and promote a reasonable level of protection for the health and safety of workers in and about their workplace. It should be interpreted in a manner consistent with that broad purpose. See *R. v. Ellis-Don Ltd.* (1990), 1 O.R. (3d) 193, 5 C.R.R. (2d) 263 (C.A.), reversed on other grounds, [1992] 1 S.C.R. 840, 7 O.R. (3d) 320n; *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, 91 D.L.R. (4th) 491.

53. In the case of *Ontario (Ministry of Labour) v. Hamilton (City),* the Court of Appeal stated as follows:

> The OHSA is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers. When interpreting legislation of this kind, it is important to bear in mind certain guiding principles. Protective legislation designed to promote public health and safety is to be generously interpreted in a manner that is in keeping with the purposes and objectives of the legislative scheme. Narrow or technical interpretations that would interfere with or frustrate the attainment of the legislature's public welfare objectives are to be avoided.

Thus, I begin from the proposition that the Act is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers. It is to be given a broad and liberal construction that is in keeping with the purposes and objectives of the legislative scheme.

54. I am further guided by the decision of the Ontario Court of Appeal in the case of *R. v. Wyssen,* [1992] O.J. No. 1917. Wyssen was a window cleaner who had entered into a contract to clean the windows of a condominium. When one of the buildings was beyond his capabilities because of overhanging balconies, Wyssen contracted with Joseph Coutu, an experienced window cleaner to do that particular building. Coutu used his own equipment and his work was not supervised by Wyssen. While Coutu was working, the rope suspending his chair broke and he fell to his death. Wyssen was charged with offences under the section 14 of the Act which reads, in part, as follows:

> 14 (1) An employer shall ensure that
>
> ....
>
> (c) the measures and procedures prescribed are carried out in the workplace;

55. The Act defined "employer" as it does now. Employer was defined as "a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services."

56. The trial judge dismissed the charges on the basis that, notwithstanding the broad scope of the definition of "employer" in the Act, Mr. Wyssen did not come within that scope. The appellate

judge upheld the decision of the trial court on the basis that "…having regard to the obvious intent of the Act…" Mr. Wyssen was not an employer.

57. The Court of Appeal determined that the lower courts had overlooked the basic principle of statutory interpretation that every word in a statute should be given a meaning. The Court of Appeal determined that "a literal construction of the Act compels the conclusion that it applies to the employment of independent contractors as well as ordinary employees". The Court of Appeal stated that this conclusion follows from the principle stated in Maxwell on the Interpretation of Statutes, 12ed. (1969), p. 28:

> The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning, if they have acquired one, and otherwise in their ordinary meaning.

58. The Court of Appeal determined that the expansive definition of "employer" in the Act reflected the clear intention of the legislature to make employers responsible for ensuring safety in the workplace.

59. Mr. Justice Finlayson indicates in his concurring reasons that he was of the opinion that it was contrary to a reasonable sense of fair play that the court should burden Wyssen with the responsibility for ensuring that an experienced contractor would be in compliance with the Act. He was, however, persuaded that the language of the Act was all-encompassing and deliberately so.

60. I will consider first Blue Mountain's argument that an interpretation of section 51(1) of the Act that requires employers to report critical injuries to non-workers is absurd. As I understand the argument it has two facets. First, I understand Blue Mountain to argue that the purpose and objective of the Act is "worker" safety. The reporting of non-worker critical injuries suffered in a location where a worker is not present does not serve to advance this purpose or objective. Hence any interpretation that requires such reporting is absurd.

61. I agree with Blue Mountain that the purpose of the Act is to provide protection to workers. I do not agree, however, that an interpretation of the Act that gives the Ministry powers to require the reporting of a non-worker critical injury suffered in a location where a worker may not be present at the time of the injury is an absurd result. I accept the Ministry's submission that, where workers are vulnerable to the same hazards and risks as non-workers who attend at a workplace, it is not an absurd result for an employer to be required to report when a non-worker suffers a critical injury at a workplace. If workers go in or near places where an incident has occurred resulting in a non-worker suffering a critical injury, the workers are equally at risk. The reporting of the non-worker injury serves to enable the Ministry to conduct an investigation and make orders or recommendations designed to enhance the protection of workers. This is equally true where a non-worker suffers a critical injury in a workplace at a time when a worker is not present. As argued by the Ministry, the approach urged by Blue Mountain would have the effect of excluding from the reporting obligation an incident where a non-worker fell down an open shaft on a construction site during the night when no workers were present. A serious hazard to workers would go unreported because no workers were present at the exact time that the accident occurred. If the goal is to enhance worker safety by alerting the Ministry to hazards in the workplace that could affect workers, a provision that requires the reporting of critical injuries suffered by non-workers in places where workers work, regardless of whether a worker was present at the time and place of the critical injury, is not absurd.

62. Further, I note the evidence of Mr. Den Bok that Blue Mountain and other resorts were advised of the need to report critical injuries to non-workers pursuant to section 51(1) of the Act due to an increase in the number of worker injuries in the resort sector. The Inspector determined that there was a need to more carefully scrutinize hazards in these workplaces in order to address an increasing number of worker injuries. I further note that Blue Mountain expressed its concerns relating to Mr. Den Bok's interpretation of section 51(1) of the Act to the Minister of Labour and received a response supportive of Mr. Den Bok's interpretation.

63. The second facet of Blue Mountain's argument relating to absurdity is that, as indicated above, if a critical injury to a non-worker has to be reported under section 51(1), section 51(2) would also apply, prohibiting the employer from carrying away "...any wreckage, article or thing at the scene...until permission to do so has been given by an inspector." That, Blue Mountain argues, would lead to considerable disruption and the potential creation of further hazards and hence would be an absurd result.

64. Section 51(2) is not before me in this matter. I do not have before me an issue as to whether Blue Mountain was required to preserve an accident scene. If the legislature has, by way of section 51(1) imposed an obligation on employers to report critical injuries to non-workers that occur in a workplace, I do not see how the impact of the operation of a completely distinct provision that is not before me and is not triggered on the facts of the case before me can override that obligation.

65. Further, and in any event, I am unable to say on the evidence before me how disruptive the requirement to preserve an accident scene would be to Blue Mountain's operations. The statistics provided by Blue Mountain as to the number of accident scenes that would have to be preserved if subsection 51(2) applied assumes that every single incident that is reported involves a critical injury. This can simply not be the case. The number of critical injury accidents has to be lower than the total number of incidents reported. Also, Mr. Den Bok testified that Blue Mountain has been advised that it is only known, not suspected, critical injuries that need to be reported. I was given no statistics as to the number of known critical injuries suffered by non-workers on the ski hills each day. Further, Mr. Den Bok testified that, last year, all ski accident scenes except one were released by an inspector by phone. Finally, Mr. Den Bok testified that the "wreckage article or thing" that cannot be removed from an accident scene pursuant to section 51(2) does not include a skiers' own clothing and equipment. It is only when equipment not owned by the injured skier is involved, such as snow making equipment or a snowmobile, that the accident scene would have to be preserved. It seems to me that, while the operation of subsection 51(2) will result in some level of disruption, whether the level of disruption that will occur is necessary and reasonable in light of the need to protect worker safety, is a determination that is best made by the legislature or in a case where the provision is actually in issue.

66. I turn then to the language of section 51(1) and consider its interpretation and application to the facts before me.

67. Section 51(1) imposes an obligation on an employer to notify an inspector "where a person is killed or critically injured from any cause at a workplace...." While the term "person" is not defined in the Act, the term "worker" is defined. Worker is defined as "a person who performs work or supplies services for monetary compensation but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program". Given that the Act defines "worker" as a category of people falling

within the scope of the term "person" it is clear that the two terms are not synonymous. The meaning of the term "person" must be broader than the definition of "worker". There are numerous other instances throughout the Act where the term "person" is used in a context that clearly indicates that it is not synonymous with the term "worker". For example, the Industrial Establishments Safety Regulations R.R.O. 1990, Reg. 851 amended to O. Reg. 179/07 provides as follows:

> 4 (1) Subject to subsection (2), the minimum age of,
>
> (a) a worker; or
>
> (b) a person who is permitted to be in or about an industrial establishment shall be,
>
> (c) sixteen years of age in a logging operation;
>
> (d) fifteen years of age in a factory other than a logging operation;
>
> (e) fourteen years of age in a workplace other than a factory.
>
> (2) Clause (1)(b) does not apply to a person who,
>
> (a) while in the industrial establishment, is accompanied by a person who has attained the age of majority;
>
> (b) is being guided on a tour of the industrial establishment;
>
> (c) is in an area of the industrial establishment used for sales purposes; or
>
> (d) is in an area of the industrial establishment to which the public generally has access.
>
> (3) Clauses (1) (d) and (e) do not apply with respect to a worker who works as a performer in the entertainment and advertising industry.

68. The foregoing subsections of Regulation 851 clearly contemplate that the term "person" is not synonymous with the term "worker". For example, while a "worker" under the age of 16 cannot be in a logging operation, a "person" under the age of 16 could be in a logging operation if they were on a guided tour.

69. Having regard to the definition of "worker" set out in subsection 1(1) of the Act, and the manner in which the words "worker" and "person" are used in the Act and the Regulations thereto, it is evident that the term "person" does not mean "worker". While the term "person" is not defined in the Act, is a commonly used term with a commonly understood meaning. The term "person" is generally understood to refer to the broadest possible range of people. Had the legislature intended to restrict the section 51 reporting obligation to instances where a "worker" suffered a critical injury, the legislature could easily have used to word "worker". It did not. Instead, the word "person" was used. The legislature must be presumed to have meant what it said. It must be presumed that the legislature intended employers to be required to report critical injuries that are suffered by people other than "workers". If I were to interpret the word "person" in subsection 51(1) to mean "worker" I would have to ignore the clear language of the statute and the commonly understood meaning of the word "person".

70. I turn then to consider the meaning of the word "workplace". The parties referred me to two cases in which the meaning of the term "workplace" as used in the Act has been considered. In the case of *U.S.W.A. Local 1005 v. Stelco Inc. (Hilton Works)*, 2000 CarswellOnt 5815 (March 30, 2000, OLRB File No. 0481-98-HS), the union members of a Joint Health and Safety Committee ("JHSC") complained that the employer would not permit them to inspect parts of the Hilton Works site where construction contractors were working. The employer denied the request of the JHSC on the basis that it would only permit an inspection of those areas where the union's members are actually working "including areas that could impact on the health and safety of the applicant's members." The Inspector declined to make an order on the basis that the "workplace" which the JHSC was entitled to inspect was subject to change and must be decided on a case by case basis. The union appealed the Inspector's refusal to make an order and the matter proceeded to a hearing before the Ontario Labour Relations Board. At the hearing, the employer and the Ministry argued that the appeal ought to be dismissed on the basis that it did not make out a *prima facie* case.

71. The Board described the issue before it as "...what is the 'workplace' of the applicant's members for the purposes of the Act." After setting out numerous sections of the Act where the word "workplace" appears, the Board commented as follows:

> 43. There are many other sections of the Act in which the word "workplace" appears. However, the Act does not specifically address the right or obligation of Joint Health and Safety Committees in industrial establishments to inspect parts of their workplace where employees of contractors may be working. Furthermore, it appears that the only decision in which an Adjudicator has been asked to determine what constitutes a "workplace" under the Act was with respect to federal air ambulances in which provincial employees were working (see *O.P.S.E.U., Local 608, supra.*) [sic: *Hyland v. Ontario* [1991] O.J. No. 655 (Gen. Div.)] The lack of litigation on this point may reflect the fact that the definition of "workplace" in the Act is extremely broad. Furthermore, the Act is remedial legislation which is to be given a broad and liberal construction. The answer to the question "what is the workplace" in most circumstances may therefore be obvious.

The Board determined that the matter did establish a *prima facie* case. The matter was very likely thereafter settled by the parties as there is no further Board decision dealing with the issue.

72. The other case provided to me by the parties to consider the meaning of "workplace" in the Act is the case of *R. v. Port Colborne, supra*, in which one of the issues was whether the shores of Lake Erie, where firefighters had attempted a rescue, was a "workplace". The Ontario Court of Justice referred to the definition of "workplace" in the Act and then stated as follows:

> With some difficulty I have reached the conclusion that a place where a rescue by a firefighter takes place whether it be at a fire or at a water rescue or in quicksand attempting to rescue a horse is a workplace within the meaning of the *Occupational Health and Safety Act*.

73. Blue Mountain relies on the *Port Colborne* decision in support of its argument that a place can be a workplace while workers are present and a non-workplace when they are not present.

74. The *Port Colborne* decision involved firefighters who, while having a fixed workplace at the fire station, also worked in many other locations as their duties required. The *Port Colborne*

decision determined that the firefighters' workplace essentially travelled with them. Wherever they were working was their "workplace".

75. Blue Mountain is a fixed workplace. There is a fixed location to which employees regularly report. There is a defined area that encompasses a ski hill, buildings, parking lots, a swimming pool etc. from which Blue Mountain operates its resort. Employees of Blue Mountain move about performing work functions within all or a part of this area on a daily basis. The area of the resort where the Blue Mountain employees perform their work functions is a "workplace" for the purposes of section 51(1) of the Act. The fact that an employee is not physically present within a section of that "workplace" does not mean that that particular section is not part of the "workplace" during the period when no employees are present.

76. I heard no evidence as to the work done by employees of Blue Mountain within the enclosed area of the indoor swimming pool where the guest drowned. I heard no evidence as to how regularly employees go into this area, what they do in the area or how many employees enter this area. However, Blue Mountain did not contest the Ministry's assertion that Blue Mountain employees enter the pool area and did not suggest that persons who were not Blue Mountain employees looked after the pool. Based on general and common knowledge I infer that at least one and perhaps more Blue Mountain employees must enter the enclosed area of the indoor swimming pool in order to clean the pool and check the water at least once, and likely more times, each day. The swimming pool thus comprises a part of at least one Blue Mountain employee's workplace. It does not cease to be a "workplace" because the employee in question moves from that area of his or her workplace to another area of the same workplace.

77. Blue Mountain did not argue that the guest who drowned in the swimming pool had not suffered a critical injury. Although Blue Mountain initially believed the guest had died of natural causes, it subsequently learned that the guest had drowned.

78. For the reasons set out above, I find that the drowning of a guest in the Blue Mountain swimming pool on December 24, 2007 triggered the reporting obligation under subsection 51(1) of the Act, as it involved a "person" who was killed from any cause at a "workplace". As a result, the appeal is dismissed and Order 1 is hereby affirmed.

1996-08-U Clary Bijl, Eugenia Cocomile, representing a group of retired RPNs Applicants v. **Canadian Union of Public Employees and its Local 145**, Responding Party, William Osler Health Centre, Intervenor

Duty of Fair Representation – Ten retired Registered Practical Nurses claimed their union failed to represent them fairly in the negotiated settlement of a pay equity dispute that resulted in a lump sum payment made to RPNs actively employed on the date of the agreement – The Board recognized that bargaining agents are often called upon to make difficult choices during negotiations, sometimes to the advantage of one group of members over another – The pay equity dispute, which was akin to the negotiation of a collective agreement, was settled after ten days of adjudication before the Pay Equity Hearings Tribunal – The outcome of that litigation did not guarantee any benefit to the RPNs, and the agreed-upon lump sum was

specifically not characterized as a pay equity adjustment – The Board was not required to address the issue of standing of the retirees to file a s. 74 complaint, nor the interplay of s. 74 and a trade union's rights or obligations under the *Pay Equity Act* – Application dismissed

BEFORE: *Mary Anne McKellar*, Vice-Chair.

APPEARANCES: *Clary Bijl, Eugenia (Jean) Cocomile, Julie Gillam, Erica Sulker, Nevlyn James* and *Janet Ambros* appearing on their own behalfs; *Tracey Pinder, Ray Walker* and *Pat Dmitruk* for the responding party; *Carolyn Kay* and *Susan Biggs* for the intervenor.

DECISION OF THE BOARD: March 17, 2009

Introduction

1. This is an application under section 96 of the *Labour Relations Act, 1995* ("the Act"). The applicants allege that the responding party trade union ("Local 145") has contravened section 74 of the Act.

2. Specifically, the applicants contend that section 74 was contravened when Local 145 entered into a settlement in respect of an application before the Pay Equity Hearings Tribunal, pursuant to terms that made active employees in a particular job class ("RPN") eligible for a lump sum payment to which retired RPNs were not eligible.

3. I held a consultation into this application on March 11, 2009.

The Facts

4. Except as may be noted below, the facts are not in dispute.

5. The intervenor ("the Employer") is a hospital.

6. The applicants are 10 in number. They were all formerly employed by the Employer as Registered Practical Nurses ("RPNs"), and each of them retired on or after January 1, 2000 and prior to February 15, 2008.

7. Local 145 is the exclusive bargaining agent for a bargaining unit comprising a number of occupational classifications, including the RPNs.

8. The matters giving rise to this application have their origin in attempts by the Employer and Local 145 ("the Institutional Parties") to reach agreement on a pay equity plan for the Local 145 bargaining unit following the wide-reaching health care restructuring that occurred in the province in 1999. The Institutional Parties had agreed (with one exception not material to this application) on the identification of job classes; their gender predominance; and the scoring of each job class on the various factors on which they were evaluated. At this point, they reached an impasse in their negotiations. There were two significant points of contention between them. One issue related to the weighting to be given to the various factors on which the job classes had been evaluated. This issue had the potential to impact the ultimate point score for the job classes. The second issue related to "banding" - that is establishing the point score ranges for job classes of comparable worth. This issue

had the potential to impact on whether any pay equity adjustments were required and/or the amount of such adjustments.

9. The Pay Equity Commission became involved in the dispute between the Institutional Parties. A Review Officer issued an order in April 2006 ("the Order"). The Order dealt with both the factor weighting and the banding issues. Under the Order, RPNs fell within the same band as licensed trades, with whom they already had wage parity. No wage adjustment would therefore be due to RPNs pursuant to the Order.

10. The Order was the subject of an application by Local 145 to the Pay Equity Hearings Tribunal. After some 10 days of hearing, the Employer and Local 145 resolved all outstanding matters, and agreed to a pay equity plan ("Plan") to be posted, and to dates by which any wage adjustments required by the Plan would be implemented and by which any retroactive adjustments would be calculated and paid. The settlement was reduced to writing and executed on February 15, 2008 ("the Settlement").

11. Under the Plan, the RPNs continued to fall within the same band as the licensed trades. No RPN was therefore entitled to receive a wage increase on a going forward basis nor any retroactive wage adjustment. Nevertheless, under the terms of the Settlement, each RPN in the employ of the Hospital on February 15, 2008 (its date of execution) received a lump sum payment pro-rated per year of full-time service for hours worked on or after January 1, 2000. The Settlement expressly stated that the RPN job class was not entitled to a pay equity adjustment. The applicants were not employed by the Employer on February 15, 2008 and so they received nothing under the terms of the Settlement, although each of them had been actively employed in the job class on and after January 1, 2000.

12. None of the applicants had attended any of the days of hearing before the Tribunal. None of them was in a position to contradict the assertion in Local 145's pleadings that one of its own witnesses in testimony in the hearing conceded that, province-wide, RPNs were paid comparably to the licensed trades, or that its case with respect to securing any monetary improvement for the RPNs from the Tribunal proceeding was quite weak. While they did make some suggestion at the consultation that Local 145 ought to have continued to pursue the litigation, and referred to some changes in the duties of their job class, those are not issues that were even at play in the Tribunal proceeding. As previously indicated, the Institutional Parties had reached agreement on how each job class scored on each of the sub-factors in the evaluation tool before any involvement by the Pay Equity Commission or the Tribunal.

13. None of the applicants had participated in the negotiations that resulted in the Plan and the Settlement. Consequently, they were also not in a position to contradict the evidence of the only witness who testified at the consultation: Cathy Lace, the counsel who had represented Local 145 in its application to the Tribunal. Her evidence with respect to the chronology of the settlement discussions and the matters canvassed is described briefly below.

14. In their pleadings, some applicants maintained that Local 145 had represented to them that their employment status (i.e. active or retired) at the time the pay equity disputes between the Institutional Parties was resolved would not affect their eligibility for any retroactive pay to which the RPN job class was entitled regardless of whether they were actively employed or retired at the point such payments were made. Other applicants indicated that they assumed that to be the case. It

became clear at the consultation that Local 145 had represented to the applicants that any pay equity adjustments for the RPN job class that ought to have been implemented on January 1, 2000 would be paid out on a retroactive basis to any RPN employed on or after that date, including RPNs such as the applicants who subsequently retired. Indeed, Local 145 agreed that it had made these representations. Furthermore, that result would comply with the requirements of the *Pay Equity Act*. Any representations made by Local 145 to the applicant's had been made, however, at points where it appeared that there would be an adjudicated outcome to the pay equity dispute. There was never any representation made by Local 145 to any of the applicants after the Institutional Parties commenced their settlement negotiations that inactive RPNs would benefit from any settlement reached. In fact, none of the applicants had any communication at all with Local 145 officials between the date the settlement negotiations commenced in earnest and the point at which they learned that the matter had been settled.

15. The applicants found out about the terms of the Settlement about a month after its execution. Some of them called Local 145 and spoke to the Vice-President, who made two statements: (1) she characterized the settlement as "unfair"; and (2) she attributed the applicants' (and other retiree RPNs') exclusion from it to the failure of counsel and/or local officials involved in the negotiations to read the Settlement carefully enough before executing it. At the consultation, Local 145 did not deny that these statements had been made by its Vice-President, but it did assert that the second statement was not accurate. These are the circumstances that prompted me to hear *viva voce* testimony from Ms. Lace.

16. Hearings before the Tribunal commenced in April 2007. At the outset, counsel for Local 145 made a verbal settlement offer to counsel for the Hospital. The proposal was that the Hospital accede to every position Local 145 took in its application. Needless to say, there was no discussion of this proposal.

17. The settlement discussions did not commence in any meaningful way until November 2007, although Ms. Lace indicated that the Tribunal panel hearing the case had been encouraging the parties to find their own resolution to the issues. On November 29, 2007, counsel for the Hospital e-mailed a draft proposal for settlement and attached draft pay equity plan to Ms. Lace. The Institutional Parties then used a previously-scheduled hearing date on January 31, 2008 to meet and negotiate. Local 145 made a counter offer of a proposal for settlement and a draft pay equity plan. The Hospital made a further counter offer on February 12, 2008. Local 145 responded to that and a resolution of all the outstanding matters was finally reached on February 15, 2008.

18. Reviewing the written proposals exchanged, and having regard to Ms. Lace's testimony as well, I have several observations about the scope of the negotiations:

- There were 23 job classes, 11 of them female, in the Local 145 bargaining unit;
- In each proposal, the RPN was in a band with the licensed trades;
- Different numbers of female job classes were entitled to pay equity adjusted rates under each of the proposals;
- In one of the Employer's proposals, the wage rate of 6 female job classes would have been adjusted;
- In one of Local 145's proposals, the wage rate of 10 female job classes would have been adjusted;

- In the final Plan, the wage rate of 8 female job classes was adjusted;
- All of the documents exchanged expressly recognized that RPNs were not entitled to have their wage rate adjusted and were not entitled to retroactive pay;
- The first three proposals nevertheless provided for a "non pay equity" payment to "current employees in the RPN job class";
- The final document substituted the more specific language of "[RPNs] employed as of the date of execution of this memorandum";
- Local 145 officials, including the Vice-President and President, participated in the negotiations; and
- The formula for determining the lump sum amount the active RPNs would receive differed in each of the proposals, and the final formula was significantly more generous than the Employer's initial offer had been.

19. Ms. Lace's assertion was that it was her opinion that the RPN job class stood no chance of benefiting from an adjudicated outcome to the pay equity dispute. Further, there was a significant risk that other female job classes also might not benefit. Consequently, when the Employer expressed a willingness to engage in meaningful settlement discussions, Local 145 saw it as an opportunity to secure a more advantageous and certain result for the bargaining unit than could be reasonably foreseen as flowing from the litigation. Additionally, Local 145 pursued with the Employer a commitment to a lump sum payment to the RPN job class, but the Employer was only willing to make that commitment insofar as current employees were concerned. As none of the RPNs would receive any money under the Order or a decision of the Tribunal, Local 145 agreed ultimately to a settlement that saw some members of that job class (the current ones) receive some monetary benefit. In short, Local 145 negotiated a benefit for the current RPN's that the Employer did not need to pay to meet its obligations under the *Pay Equity Act*.

20. When the retired RPNs contacted Local [illegible] inquire about their exclusion from the benefits of the Settlement, Local 145 in turn contacted Ms. Lace and instructed her to demand payment from the Employer. She did so by letter dated June 12, 2008. The Employer's reply, dated June 24, 2008, quite predictably in the circumstances, simply asserted that only RPNs employed as of the date of execution of the Settlement were entitled to any benefit under its terms and they had all been paid.

Analysis

21. The applicants allege a contravention of section 74 of the Act. It provides:

> **74.** A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

22. Prior to the commencement of the consultation, no party had taken any position about whether section 74 applies to a trade union's conduct in matters arising under the *Pay Equity Act*. To my knowledge, this issue has not arisen before. Similarly, no party had taken any position about

whether former members of a bargaining unit may bring an application pursuant to section 74. There is Board jurisprudence relating to the question of who may make a section 74 complaint.

23. There had been a request by Local 145 that this application be dismissed without a hearing or consultation for failure to state a *prima facie* case of a contravention of the Act, but neither of those issues was raised. A differently-constituted panel of the Board dealt with that request in writing, and directed that the matter be set down for consultation.

24. At the conclusion of the consultation, after all but concluding statements had been made, counsel for Local 145, asserted for the first time that the applicants have no standing to assert a contravention of section 74 because they were not current bargaining unit members at the time their claim arose. He requested that the application be dismissed on that basis. I have concluded that the application must be dismissed on its merits. It is therefore unnecessary to address this jurisdictional question, nor to consider any question related to the inter-play of section 74 and a trade union's rights or obligations under the *Pay Equity Act*. I simply want to make it clear that I am deciding neither of these issues in this application.

25. I think it is clear from the testimony of Ms. Lace and the settlement proposals exchanged, that, regardless of what the Vice-President of Local 145 may have told some of the applicants, there was never any intention that any RPNs other than current employees would benefit under any settlement, and simply no basis to conclude that retired RPNs were excluded due to the inadvertence of counsel. Even if such facts could constitute a contravention of section 74, there is no basis for reaching that conclusion here where the factual assertion by the applicants is not accurate.

26. It is also clear that at no time during the settlement negotiations did anyone from Local 145 make a representation to any of the applicants that she would benefit from those negotiations, and then not make good on that promise. Even if such facts could constitute a contravention of section 74, there is no basis for reaching that conclusion here.

27. What remains to be considered, therefore, is whether the terms of the Plan and Settlement, in the context in which they were concluded, so disadvantage the RPNs as to be considered arbitrary.

28. The Board's jurisprudence recognizes that bargaining agents are frequently placed in the position of representing employees who have competing interests. For example, there may be bargaining unit members vying for a posted bargaining unit position. The unsuccessful candidate may wish to grieve, and the bargaining agent must decide whether to support him/her or whether to support the employer's selection of the other candidate. Insofar as collective agreement negotiations are concerned, some proposals for benefit or language changes will have a differential impact on portions of the bargaining unit. This case, involving as it does a settlement affecting the entire Local 145 bargaining unit, has obvious analogies to the negotiation of a collective agreement. The standard by which the Board has reviewed bargaining agents' conduct in collective agreement negotiations is therefore apt to my consideration of whether Local 145's negotiation of the Settlement and Plan should be characterized as arbitrary, discriminatory, or made in bad faith.

29. The mere fact that a negotiated settlement is more beneficial to one group of employees (in this case the active RPNs) than another (RPNS who retired after January 1, 2000 and before February 15, 2008) does not necessarily mean the bargaining agent's conduct is arbitrary or discriminatory. The Board recognizes that trade unions must make tough choices in bargaining and

does not interfere where the trade union provides some rational basis for agreeing to such terms. The Board's jurisprudence is reflected in the following (somewhat lengthy) excerpt from its decision in *City of Thunder Bay*, [1983] OLRB Rep. May 781:

> 68. We consider firstly the issue of substantive discrimination. Has the union violated section 74 of the Act by negotiating collective agreements which have produced compression of the wage grid to the relative disadvantage of the complainants? The jurisprudence provides considerable guidance to the resolution of that question. The cases are replete with passages recognizing that in the collective bargaining system trade offs must be made between the competing interests of different groups of employees. The tension as to which employees will get which slice of the wage and benefits pie negotiated with the employer is intrinsic to any union. Perhaps the best judicial recognition of that reality was made in the often quoted statement of the Supreme Court of the United States in *Ford Motor Co. v. Huffman*, [1953] 345 U.S. 330 at 338:
>
> > The bargaining representative, whoever it may be, is responsible to, and owes complete loyalty to, the interests of all whom it represents...Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
>
> 69. The collective bargaining system, predicated as it is on principles of voluntarism and majoritarianism, deems that issues of that kind are best resolved through the internal procedures by which the union determines the will of its members. The fact that an individual or group is not happy with the choice of the majority does not of itself establish a violation of the duty of fair representation. The principles expressed in *Huffman* were recently applied in *Dufferin Aggregates Ltd.*, [1982] OLRB Rep. Jan. 35. In that case a group of junior truckers lost their work in a quarry as the result of the decision of the majority of their bargaining unit in difficult economic times to amend the collective agreement to substitute layoffs by seniority for a previous work sharing arrangement. In finding that the union's decision did not violate the duty of fair representation the Board made the following observations:
>
> > Allocating work and wages, whether in scarcity or in plenty, is the central fact in any scheme of collective bargaining. The struggle between union and management over the division of profits in the form of wage and benefits settlements usually gets the bulk of public attention. The less visible question, however, of which employees will work and how much they will get is often no less important. It may generate as much heat inside the union hall as does the confrontation with the employer outside.
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> ***
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> > The fact that a union may be required in bargaining to make a hard decision that has a serious economic impact on individuals, up to and including the loss of their jobs, cannot of itself make that decision unlawful. That kind of decision is moreover, not unusual. In making collective agreements it is

> practically impossible for the unions to avoid making decisions that benefit one class of employees at the expense of another. For example when a union opts for more wages rather than better pension provisions it benefits its younger members rather than the older ones. Trade-offs of that kind are the everyday stuff of collective bargaining.
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> ***
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> There is nothing inherently unlawful in a union making a decision that favours a group of employees over another. From the earliest decisions interpreting section 74 of the Act the Board has recognized the need for unions to have the latitude to make decisions that may favour certain employees at the expense of others. As the Board put it in *Ford Motor Co. of Canada Ltd.*, [1973] OLRB Rep. Oct. 519, in applying what was then section 60 of the Act, (at pp. 525-26):
>
> > In practical terms the relationship between members of the bargaining unit and the trade union is one of majority control. The relationship is not strictly one of contract between employee members of the union and the union, but rather the relationship is such that the system created more closely resembles the Legislative process than a contractual relationship; see Cox, "Rights Under a Collective Agreement" 69 Harv. L. Rev. 601 (1956).
> >
> > Section 60 of *The Labour Relations Act* seeks to ensure that individual's rights are not abused by the majority of the bargaining unit; it is an attempt to achieve a balance between the individual interests and the majority interest by recognizing that the exclusive bargaining agent has a duty to consider all the separate interests in the performance of its obligations. The duty has been described as the duty of fair representation. The emphasis is on fairness-it is a duty to act fairly in the interests of all members as well as non-members, craft employees as well as industrial employees. It is not a duty which makes the union the guarantor or insurer for every situation in which an individual employee is aggrieved or adversely affected; rather, the statute attempts to have the union consider the position of all groups and to weigh the competing interests of minorities, individuals and other like groups in arriving at its decision.
>
> 70. The Board is satisfied that the foregoing principles correctly point the way to the resolution of the first issue. As members of a large bargaining unit - a unit whose very effectiveness in gaining improvements for its members may well depend on its size – the complainants must accept that their economic interests may to a degree conflict with those of other employees whose views may reflect the will of the majority. As long as the wishes of the majority are effected by means that are honest, open and devoid of ill-will or hostility aimed at the minority, there is no violation of the duty of fair representation.

30. In this case, Local 145 knew that RPNs did not benefit from the Order of the Pay Equity Review Officer. It also knew that RPNs across the province were comparably valued to the licensed trades employed by their Employer. Its witness said as much at the Tribunal hearing. Local 145 therefore concluded, after 10 days of hearing, that there was nothing to be gained for RPNs at all in continuing the litigation in front of the Tribunal. At the same time, RPNs were not the only female job class in the Local 145 bargaining unit. The other female job classes had benefited from wage

adjustments under the Order. There was no guarantee that they would do as well at the Tribunal. Local 145 was the applicant at the Tribunal. The Employer had, however, taken issue with some aspects of the Order as well. It was not unreasonable for Local 145 to try to reach a negotiated settlement of the Plan in these circumstances. It was also not unreasonable for Local 145 to seek to get something, even if it was not a pay equity adjustment, for the RPNs out of that process. The Employer was amenable to that, principally as its counsel explained at the consultation to quell discontent among the bargaining unit members. The Employer also had costing concerns about the RPN lump sum payments, and noted at the consultation that the affected retired RPNs is a much larger group than the 10 applicants to this proceeding. Consistent with the Employer's interests, it was prepared to pay a lump sum to current RPNs only. Local 145 accepted, as that was a better outcome in its view than achieving nothing for this group.

31. In all of the circumstances, I cannot conclude that Local 145 contravened section 74 of the Act insofar as the applicants are concerned when it agreed to the Plan and Settlement dated February 15, 2008.

Disposition

32. This application is dismissed.

2757-07-R United Brotherhood of Carpenters and Joiners of America, Local 494, Applicant v. **Elmara Construction Co. Ltd.**, Responding Party v. Labourers' International Union of North America, Local 625, Interested Party

Certification – Construction Industry – Intervention – In this application for certification by the Carpenters, the employees in the proposed bargaining unit were engaged in form builder work on the application filing date – The Labourers sought to intervene, arguing that the proposed bargaining unit employees were covered by their collective agreement with Elmara – The issue before the Board was whether the Labourers' position was jurisdictional or representational – The Board ruled that the Labourers' position was jurisdictional: it was clear from the wording of the collective agreement that the Labourers represent form builders who are construction labourers but not those who are carpenters or carpenters apprentices – The Labourers did not establish, as is required for intervener status, that they represent or are the bargaining agent for a minimum of one employee in the bargaining unit that was the subject of the application – Intervention denied – Certificate issued

BEFORE: *Lee Shouldice*, Vice-Chair.

APPEARANCES: *Doug Wray* and *Tomi Hulkkonen* for the applicant; *Mike Quaggiotto* for the responding party; *Eli Gedalof* and *Scott O'Neil* for the intervenor.

DECISION OF THE BOARD; April 30, 2009

Introduction

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") that the applicant ("Local 494" or "the applicant") elected to have dealt with under section 128.1 of the Act. The application filing date is November 27, 2007.

2. On December 10, 2007, Labourers' International Union of North America, Local 625 ("Local 625") filed an intervention in this proceeding.

3. Local 494 seeks to be certified for a bargaining unit of carpenters and carpenters' apprentices employed by the responding party ("Elmara" or "the responding party") in all sectors of the construction industry other than the institutional, commercial and industrial sector of the construction industry, in Board Area No. 1. Local 625 asserts that it is a party to a collective agreement that binds Elmara, and that the work performed by the employees subject to this application falls within the scope of that collective agreement. As a result, Local 625 asserts that the application should be dismissed. Should the Board ultimately disagree with its position, Local 625 argues in the alternative that any certificate provided to Local 494 should expressly carve out the bargaining rights that it holds with Elmara. Local 494, on the other hand, asserts that that Local 625 ought not to be provided with status to intervene in this proceeding, that the collective agreement in question does not apply to the work performed by the individuals on the Schedule A list of employees filed by Elmara in any event, and that the bargaining rights held by Local 625 can exist independently of the bargaining rights sought by Local 494.

4. The Board heard the evidence and the argument of the parties on June 10, 2008 and February 26, 2009. For the reasons set out below, it is not necessary to refer to or consider any of the extrinsic evidence put into evidence by the parties.

The Facts

5. The facts were not largely in dispute. Local 494 applied to be certified for the bargaining unit identified above on November 27, 2007. It asserted that two employees of Elmara were performing the work of a carpenter or a carpenters' apprentice at one site in Board Area No. 1, namely at a bridge project on Highway 35 in Lakeshore Township. It asserted in its application that it had filed with the Board supporting membership evidence on behalf of more than 55 percent of the employees in the proposed bargaining unit.

6. The response filed with the Board by Elmara confirmed that on the application filing date it employed two carpenters or carpenters' apprentices at a bridge on Highway 35 in Lakeshore Township. Elmara stated in its response that it was not bound by a collective agreement covering any of the employees in the applicant's proposed unit. With its response it filed a Schedule "A" list of employees that contained the names of two individuals that were identified as having performed "layout and setup of form work" on the application filing date.

7. As noted above, on December 10, 2007, Local 625 filed an intervention with the Board. It states that Elmara was at all relevant times bound by the collective agreement between Local 625 and the Heavy Construction Association of Windsor, with effect from May 1, 2004 to April 30, 2008 (the "HCAW collective agreement"). Elmara does not dispute that it is bound to the HCAW collective

agreement. Local 625 asserts in its intervention that it is affected by this application because the bargaining unit applied for by Local 494 conflicts with Local 625's bargaining rights, and that those rights are not open for displacement. In particular, it notes that the employees who are the subject of this application were performing "layout and setup of form work". It asserts that "layout and setup of formwork" is encompassed within the scope of the HCAW collective agreement.

8. For the purposes of this issue, the critical portions of the HCAW collective agreement read as follows:

ARTICLE 2 RECOGNITION

2.1 The Employer recognizes the Union as the exclusive bargaining agent for all Employees of the Employer covered by the classifications set out in this agreement, save and except non-working Forepersons and persons above the rank; office, clerical staff and security guards …

SCHEDULE "A"

CLASSIFICATION AND WAGE RATES FOR LABOURERS MEMBERS OF L.I.U.N.A. LOCAL NO. 625

GEOGRAPHICAL AREA OF L.I.U.N.A. Local 625
The Counties of Essex and Chatham-Kent

CLASSIFICATIONS

OPEN CUT WORK

1. Labourers (General)

2. Form Builders; Asphalt Rakers; Pipe Layers and Fitters; Cement Finishers; Earth Boring Equipment Operators (Class 2 shall receive a minimum of twenty (.20) cents per hour above the General Labourers' rate).

UNDERGROUND WORK

3. Underground Labourers, Dinky Operators.
4. Muckers and Mucking Machine Operators.
5. Miners, Mole Operators and Mining Machine Operators.
6. Form Builders and Concrete Workers

…

CRAFT JURISDICTIONAL CLAIMS (SUBJECT TO BUT NOT LIMITED TO)

Form building and concrete finishing for catch basins, curbs, gutters and sidewalks, Sewer and appurtenances, Manholes, valve chambers and similar sewer and roadway fixtures …

Underground concrete work Form building and setting …

9. Local 625 asserts that the HCAW collective agreement recognizes it as the exclusive bargaining agent for all employees in the classifications set out in the agreement, and that one of those classifications is "Form Builders". Local 625 asserts that these classifications are not merely jurisdictional provisions but instead define the scope of its recognition clause under the collective agreement. Local 625 states that the applicant cannot seek representation rights for carpenters and carpenters' apprentices employed by Elmara in the non-ICI sectors of the construction industry in Board Area No. 1 through the support of employees engaged in form work on the application filing date, as the terms of employment of those employees were already governed by the HCAW collective agreement that was not in an open period.

10. The evidence establishes that on the application filing date two employees of Elmara were performing the layout and setup work required to build forms, and, in addition, some installation of steel forms, at a project in Belle River, in Essex County, Ontario. The work involved with the project included the removal of an existing bridge (a 2.44 metre span open footing culvert) and the construction of a new 3.0 metre span single cell concrete box culvert. The project also involved a certain amount of grading, asphalt paving and restoration, coffer dams, dewatering and bridge deck waterproofing. There was considerable disagreement between Local 494 and Local 625 as to whether this project was a "bridge" or a "box culvert" – a disagreement that need not be resolved for the purposes of this decision. The parties agreed that the work performed by the two individuals at this project on the application filing date is work that is claimed as its work by Local 494. There is also no dispute that Local 625 did not file any membership evidence with the Board to support the proposition that it represents one or both of the employees of Elmara who are the heart of this application.

11. Counsel for Local 494 asserted that Local 625 ought not to be provided with intervenor status in this proceeding. Relying upon the case of *Semple-Gooder Roofing Ltd.*, [1983] OLRB Rep. November 1908 and a number of decisions of the Board that have applied the principle established by that decision (including *Standard Underground High Voltage Ltd.*, [2002] OLRD No. 812 (March 1, 2002), *Anmar Mechanical & Electrical Construction Ltd.*, 2007 CanLII 48369 (October 26, 2007) and *North Shore (Sault) Insulations Ltd.*, 2008 CanLII 40582 (July 24, 2008)), counsel for Local 494 submitted that the position taken by Local 625 is jurisdictional and not representational. As a result, Local 494 asserts that intervenor status ought to be denied Local 625.

12. In *Semple-Gooder Roofing Ltd.*, cited above, the Board made the following observations at paragraph 11:

> (3) The Board has long recognized that there are overlapping claims to work performed by various of the trade classifications used by the Board to describe bargaining units in the construction industry. The Board has not accepted those overlapping or competing claims as proper matters for a representation proceeding. Such proceedings are not the appropriate medium for making any determination with respect to the work jurisdiction claims of trade unions engaged in the construction industry. Such claims are more properly dealt with under those procedures in collective agreements or in the Act designed for the resolution of work assignment disputes. Similarly, representation issues are more properly dealt with in certification or termination proceedings.
>
> (4) The proceeding before the Board in the instant case is a certification proceeding. The Conference has intervened in the proceeding, not on the basis of

> representing any employees who would be part of the bargaining unit which the Council is seeking, but on the basis of an apparently overlapping claim with respect to work jurisdiction. That overlapping claim is also the basis of the Conference's assertion that, because the work is alleged to be work covered by the Sheet Metal Workers' Provincial Agreement, the application is not timely. Since the Board considers a certification proceeding not to be an appropriate medium for determining work jurisdiction claims, a claim of work jurisdiction is not an appropriate basis for intervening in this application.
>
> (5) Since the Conference does not claim to represent any of the persons who would be included in a bargaining unit described in terms of ironworkers and ironworkers' apprentices, it lacks status to intervene in this application. ...

Local 494 argues that, having regard to the principle outlined by the Board in *Semple-Gooder Roofing Ltd.*, the Board should conclude that Local 625 has no standing to intervene in this proceeding. The applicant states that whatever work classifications the HCAW collective agreement may actually cover, there can be no dispute that the agreement clearly does *not* cover the classifications of carpenter and carpenters' apprentice. Local 494 states that it is not seeking to displace the bargaining rights held by Local 625, and notes that Local 625 has not filed with the Board any membership evidence to suggest that it represents even one of the individuals subject to this application. Local 494 argues that the position taken by Local 625 at most raises the possibility of future jurisdictional issues – issues that can be dealt with, if necessary, by the work assignment dispute provisions of the Act.

13. Local 625 disagrees with the characterization of its position by Local 494. Consistent with the position Local 625 took in the response it filed with the Board, counsel for Local 625 submitted in oral argument that, properly characterized, the position taken by Local 625 is not jurisdictional but is representational. Conceding that this was a key "pivot point" that could very well determine this proceeding, counsel for Local 625 stated that his client does not desire to intervene in order to claim work, but rather desires to intervene in this proceeding in order to ensure that its representation rights are protected. In support of the position that Local 625's position is representational rather than jurisdictional, counsel for Local 625 notes that the recognition clause contained in the HCAW collective agreement refers not to the work of a specified trade or craft, but instead refers to the people performing the work. That is, that the bargaining unit is a "form builders" unit, not a unit of construction labourers. As a result, counsel for Local 625 submits that his client's representation rights would be negatively affected if individuals performing the work of a form builder on the application filing date were permitted to be represented by Local 494. Counsel asserted that if Local 625 represents the employees of Elmara who perform the work of form building, then Local 494 cannot rely upon employees of Elmara who are form builders to become certified. Here, counsel submits, Elmara merely violated the HCAW collective agreement by not hiring its form builders through Local 625. He asserts that Local 494 ought not to be entitled to secure bargaining rights on the basis of the membership support it might have secured from those employees.

14. Mr. Quaggiotto, who appeared on behalf of Elmara, did not make any submissions responding to the specific positions adopted by the other parties.

Decision

15. In my view, the position taken by Local 625 in this proceeding is at its core one that relates to jurisdiction and not to representation. A trade union that desires to intervene in an application for certification by another trade union must establish that it represents or is the bargaining agent for at least one employee in the bargaining unit that is the subject of the application before it will be permitted to participate in the proceeding (see *Runnymede Development Corporation Limited*, [1987] OLRB Rep. October 1305, at paragraph 14, and *Napev Construction Limited*, [1976] OLRB Rep. March 109, cited therein). In my view, Local 625 has established neither.

16. As noted above, there is no dispute that Local 625 does not represent either individual whose name is included on the Schedule "A" list of employees filed by the responding party. As a result, the sole basis for allowing Local 625 to intervene in this proceeding is whether Local 625's assertion that the two individuals whose membership support underpins the application ought to have been hired pursuant to the HCAW collective agreement allows for the conclusion that Local 625 "is the bargaining agent for at least one employee in the unit"?

17. In my view, the answer to that question is "no". The position taken by Local 625 is premised upon the argument that the scope of its recognition clause with the HCAW is defined by way of work classifications contained in that collective agreement, and therefore that every "form builder" employed by Elmara must by definition be employed pursuant to the terms of the HCAW collective agreement. But this argument does not hold upon careful consideration. As noted by the Board in *Semple-Gooder Roofing Ltd.*, cited above, the Board has long recognized that there are overlapping claims to work performed by various of the trade classifications used by the Board to describe bargaining units in the construction industry. The Board put it this way in *Runnymede Development Corporation Limited*, cited above, at paragraphs 22 and 23:

> 22. ... Unfortunately, the work jurisdictions of trades do overlap. In addition, as we have already noted, collective agreements in the construction industry often identify the employees in the bargaining unit to which they apply in terms of the work they perform. As a general rule, there is no necessary congruence between the bargaining rights held by a trade union and its work jurisdiction. Consequently, a construction industry trade union does not necessarily have a general absolute right to a particular kind of work, even though that work may be performed by employees whom it represents (which in the construction industry usually means its members) pursuant to the terms of one or more collective agreements. The fact is that, in the construction industry, more than one trade union may have bargaining rights for employees who, though described in terms of different job categories, perform some of the same work. These overlaps give rise to competing claims for work between trade unions; that is, jurisdictional disputes ... An application for certification is not the appropriate forum for settling such disputes or for determining the jurisdictional limits of trade unions ...
>
> 23. Some of the work covered by the Housing Bureau Agreement is work which can be, and is, performed by either construction labourers, or by carpenters or carpenters' apprentices; that is, it is work over which both trades assert jurisdiction ... It is both "labourers work" and "carpenters work". In such circumstances, the work being performed cannot be determinative of the trade of the person performing it ... Consequently, the fact that members of the

> [Labourers'] sometimes perform work (for the respondent) that carpenters also do does not mean that the intervenor represents all carpenters employed by the respondent.

18. Counsel for Local 625 is correct to observe that the recognition provision of the HCAW collective agreement is defined by reference to the work classifications set out in Schedule "A" to that collective agreement, and that one of the specific classifications identified in the HCAW collective agreement is that of "Form Builders". But the structure of the recognition provision contained in the HCAW collective agreement cannot transform what is at its heart a jurisdictional question to one of representation. A close review of the work classification provisions of the HCAW collective agreement discloses that the "Form Builders" classification falls within Schedule "A" to the collective agreement, under the heading "Classification and Wage Rates for Labourers, Members of L.I.U.N.A. Local No. 625". It is clear from the wording of the HCAW collective agreement that Local 625 represents form builders who are construction labourers. Local 625 does not represent, nor does it purport to represent, and the HCAW collective agreement does not cover, or does it purport to cover, form builders who are carpenters and carpenters' apprentices. Local 494 represents the workers in that trade, including those carpenters and carpenters' apprentices who would be included within the work classification of "form builders".

19. As a result, the basis upon which Local 625 asserts that it ought to be provided intervenor status in this proceeding is not supportable. For the reasons identified in *Semple-Gooder Roofing Ltd.*, *Standard Underground High Voltage Ltd.*, *Anmar Mechanical & Electrical Construction Ltd.*, *North Shore (Sault) Insulations Ltd.* and *Runnymede Development Corporation Limited*, the position adopted by Local 625 in this proceeding is one that is properly characterized as jurisdictional, not representational. For the reasons identified in those same decisions, the Board does not permit a trade union to intervene in another trade union's certification application where the only basis for that intervention is jurisdictional in nature.

20. In the result, Local 625 has not established any basis for intervenor status in this proceeding. It is denied intervenor status, and the submissions it has made in its intervention and at the hearing will not be taken into account by the Board in determining this proceeding.

21. As noted above, the responding party filed its response with the Board within the time stipulated by Rule 25.5 of the Board's Rules of Procedure. In that response, the responding party provided the Board with the information required by subsection 128.1(3) of the Act.

22. The Board finds, pursuant to subsection 158(2) of the Act, that all carpenters and carpenters' apprentices in the employ of the responding party in the Counties of Essex and Kent, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

23. On the basis of the information provided in the application (including the information and membership evidence filed by the applicant), and the information provided by the responding party under subsection 128.1(3) of the Act, the Board is satisfied that more than fifty-five per cent of the employees in the bargaining unit were members of the applicant on the date the application was filed. The applicant filed membership evidence on behalf of two persons, both of whose names appear on the list of employees submitted by the responding party.

24. The applicant has asked that it be certified pursuant to section 128.1 of the Act relying solely on the number of persons in the bargaining unit who are members of the applicant. It is entitled to do so. There is nothing raised in the application or the response that would cause the Board to consider directing a representation vote.

25. The Board received no objection from any employee within the time set in the Notice to Employees provided to the responding party for posting.

26. The Board is satisfied that it should certify the applicant.

27. Therefore, pursuant to subsection 128.1(13) of the Act, a certificate will issue to the applicant trade union in respect of all carpenters and carpenters' apprentices in the employ of Elmara Construction Co. Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

28. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 30 days.

2504-08-R Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Graham Bros. Construction Limited**, Responding Party v. International Union of Operating Engineers, Local 793, Intervenor

Certification – Construction Industry – Membership Evidence – Both the Labourers and the Operating Engineers applied to certify employees of Graham on the same date (and intervened in each other's applications) – In its responses to each application, Graham filed Schedule As that contained a number of the same names; Graham asserted that, in the time required to file a response, it was unable to determine with certainty which bargaining unit the individuals belonged to – The two unions agreed that thirteen of the individuals at issue should be on the OE list – The OE subsequently withdrew its application – The Labourers argued that since there was an all party agreement with respect to the thirteen individuals, their names could not remain on the employer's list in the LIUNA application: first, parties are not permitted to resile from agreements; secondly, employees in the construction industry cannot be in more than one bargaining unit on any given day – The Board rejected LIUNA's assertions and refused to remove the names from the LIUNA Schedule A – The Board held that Graham had merely proffered a position with respect to the individuals, but had not agreed to their placement on either list – Furthermore, even if there had been an agreement, it became irrelevant when the OE application was withdrawn – Matter continues

BEFORE: *Diane L. Gee*, Alternate Chair.

DECISION OF THE BOARD: February 24, 2009

1. This is an application for certification filed by the Labourers' International Union of North America, Ontario Provincial District Council ("LIUNA") under the construction industry provisions of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act") that LIUNA elected to have dealt with under section 128.1 of the Act.

2. This decision deals with one issue that the parties agreed to have the Board determine as a preliminary issue.

3. LIUNA and the International Union of Operating Engineers, Local 793 (the "OE") each filed an application for certification in respect of employees of Graham Bros. Construction Limited (the "Employer" or "Graham") on November 12, 2008. The OE file was assigned Board File No. 2848-08-R. The OE elected to have its application dealt with under section 128.1 of the Act. Graham filed timely responses, including Schedule As, in both applications. There are 24 names listed on the Schedule A filed by Graham in the OE application (the "OE Schedule A") that also appear on the Schedule A filed by Graham in the LIUNA application (the "LIUNA Schedule A").

4. As is set out in greater detail below, the OE and LIUNA both advised Graham that they had agreed that 13 of the 24 names listed on both Schedule As belong on the OE Schedule A. LIUNA then took the position that, having regard to their "agreement" that 13 names that appeared on both Schedule As should be on the OE Schedule A, those 13 names had to be removed from the LIUNA Schedule A. Graham did not agree and the matter was referred to the Board for determination.

5. The facts are largely not in dispute.

6. LIUNA applied to the Board on November 12, 2008 to be certified to represent all construction labourers in the employ of Graham Bros. Construction Limited in Board Areas 8, 18 and 26 in all non-ICI sectors of the construction industry. On that same day, the OE filed an application to be certified to represent all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment and those primarily engaged in the repairing or maintaining of same and employees engaged as surveyors in the employ of Graham Bros. Construction Limited in Board Areas 8, 18 and 26 in all non-ICI sectors of the construction industry.

7. The application filed by LIUNA contains the following statement:

> We request that this Application be heard together with the Application being filed by the International Union of Operating Engineers, Local 793, which we understand is also being filed in respect of the Responding Party on November 12, 2008.

8. The application filed by the OE contains a similar request. The Unions state that they conducted a joint organizing campaign and coordinated their efforts to have the two applications filed on the same date.

9. As required by Rule 25.5 of the Board's Rules of Procedure, Graham's response to the OE application included a Schedule A listing the employees Graham asserted were at work in the bargaining unit on the application filing date. The OE Schedule A contains 85 names. At the bottom of the Schedule A appears the statement "This list has been prepared by me or on my instructions and

I confirm that it is accurate." The OE Schedule A is signed by Graham's counsel. Neither the response nor the OE Schedule A contains a statement qualifying the accuracy of the Schedule A or purporting to reserve the right to subsequently revise the list by way of additions or deletions.

10. Similarly, Graham's response to the LIUNA application included a Schedule A listing the employees Graham asserts were at work in the bargaining unit on the application filing date. The LIUNA Schedule A contains 129 names. At the bottom of the Schedule A appears the statement "This list has been prepared by me or on my instructions and I confirm that it is accurate." The LIUNA Schedule A is signed by Graham's counsel. Again, neither the response nor the LIUNA Schedule A contains a statement qualifying the accuracy of the Schedule A or purporting to reserve the right to subsequently revise the list by way of additions or deletions.

11. Twenty-four of the names on the OE Schedule A are also on the LIUNA Schedule A.

12. On November 20, 2008, the Board issued two separate decisions in which the OE and LIUNA applications were referred to the Manager of Field Services. The Manager of Field Services was directed to conduct a single Regional Certification Meeting in respect of both matters.

13. LIUNA filed an intervention in the OE's application on November 21, 2008. On December 3, 2008, the Manager of Field Services advised the parties that a Regional Certification Meeting would be held on December 17, 2008. The OE filed an intervention in LIUNA's application on December 5, 2008.

14. On December 12, 2008, there was a series of correspondence from both the OE and LIUNA to the Board. LIUNA wrote to the Board setting out its position in respect of the names listed on the LIUNA Schedule A filed by Graham. LIUNA agreed with 64 of the names being on the Schedule A and set out its reasons for challenging the remaining 65 names. Immediately thereafter, the OE wrote to the Board indicating that the OE was in agreement with the LIUNA's position in respect of the LIUNA Schedule A. LIUNA then wrote a further letter to the Board stating that there was a "full and binding agreement amongst all parties to this application" that 64 people were properly included on the list of bargaining unit employees in the LIUNA application.

15. The OE wrote to the Board on that same day setting out its position in respect of the names listed on Graham's OE Schedule A. In this letter, the OE set out the names that it agreed were at work in the OE bargaining unit on the application filing date. Among the names the OE agreed were at work in the OE bargaining unit on the date of application, and thus properly on the list, were 13 of the 24 names that Graham had listed on both the OE and LIUNA Schedule As. Immediately thereafter, LIUNA wrote to the Board advising that it "agrees with and fully adopts" the positions of the OE. The OE then immediately wrote to the Board stating that "there is full agreement" as between the OE, Graham and LIUNA with respect to the persons that the OE had stated in its letter earlier that same day were properly on the list.

16. The following business day, December 15, 2008, the OE wrote to the Board as follows:

> Based on the List of Employees filed by the Responding Party and the agreement of all parties as to inclusions on that list, as well as the agreements reached with respect to the List of Employees in OLRB File No. 2504-08-R, the International Union of Operating Engineers, Local 793 requests the withdrawal of its Application for

Certification (OLRB File No. 2484-08-R) in light of the Section 8.1 challenge by the Responding Party.

17. Given that the OE had elected to proceed under section 128.1 of the Act, section 8.1 had no bearing on the OE application (see section 128.1(19)). Thus, the Board (differently constituted) advised the OE by decision dated January 8, 2009 that the application would be dismissed and gave the OE a deadline for the filing of submissions as to why this should not be the result. Following receipt of further submissions from the OE clarifying that it sought to withdraw the application, a Board decision issued on January 20, 2009, acknowledging the withdrawal of the OE application.

18. In view of the OE's letter of December 15, 2008 withdrawing its application, a Regional Certification Meeting took place on December 17, 2008 in respect of only the LIUNA application. Graham, LIUNA and the OE were all in attendance. At that meeting, LIUNA took the position that because there had been an agreement reached in the OE certification application that 13 names that appeared on the LIUNA Schedule A were properly on the OE Schedule A, they could not remain on the LIUNA Schedule A. Graham disagreed. Accordingly, the parties agreed that the issue as to whether the 13 names LIUNA and the OE agreed ought to be on the OE Schedule A must be removed from the LIUNA Schedule A would be determined by the Board as a preliminary matter.

19. LIUNA relies on two principles in support of its position that, once an agreement was reached that the 13 names were on the OE Schedule A, they could not also be on the LIUNA Schedule A. The two principles are: that parties are not permitted to resile from agreements; and an employee in the construction industry cannot be in more than one bargaining unit on any given day.

20. LIUNA argues that it is a well-established Board principle that the parties to an application for certification are bound to the positions that they take and agreements reached and will not be permitted to resile from those positions or agreements especially where they concern status disputes in the construction industry. In support of its position, LIUNA relies on the following decisions:

- *Nathan Reid Homes Ltd.*, 2008 CanLII 56632 (ON L.R.B.) (Oct. 10, 2008) in which the employer was not permitted to remove three names from its own list after the union had agreed at the Regional Certification Meeting that they were at work in the bargaining unit on the application date.

- *L.V. Concorde Contracting Inc.*, 2008 CanLII 45286 (ON L.R.B.) (Sept. 8, 2008) in which the employer was not permitted to remove three names from its own list at the Regional Certification Meeting.

- *Dinardo C. Group Inc.*, 2008 CanLII 7495 (ON L.R.B.) (February 15, 2008) in which the employer had challenged the appropriateness of the bargaining unit sought by the applicant and submitted two lists: one bearing the names of individuals in the unit sought by the applicant; and one bearing the names of individuals in the unit it submitted was appropriate. At the Regional Certification Meeting, held after the Board found the applicant's unit to be appropriate, the employer sought to add a name to the list of employees in the applicant's proposed unit. The Board would not permit the addition.

- *Pioneer Construction Inc.*, 2008 CanLII 12397 (ON L.R.B.) (March 14, 2008) in which the Board refused to permit an employer to challenge a name on its own list of employees when

the union had, one month earlier, at the Regional Certification Meeting, agreed with its inclusion on the list of employees.

- *Harnden & King Construction Ltd.*, [1987] OLRB Rep. Dec. 1510 in which the employer had responded to two certification applications filed on the same day and included two named individuals on both lists. The union challenged the inclusion of the two individuals on one of the lists and did not challenge their inclusion on the second list. The Board commented that, in the circumstances, there had been an implicit or apparent agreement that the two were on the list where there had been no union challenge. Nonetheless, the Board went on to determine, based on the report of the Labour Relations Officer, that the two were not properly on the second list.

- *Ontario Corporation Number 2124279 c.o.b. as Wicks Construction & General Contracting Ltd.*, [2008] O.L.R.D. No. 4070 (Oct. 6, 2008); request for reconsideration denied *Ontario Corporation Number 2124279 c.o.b. as Wicks Construction & General Contracting Ltd.*, 2008 CanLII 56227 (ON. L.R.B.) (Oct. 30, 2008) in which the employer sought to prevent the OE from adding a name to the list of employees on the basis that the employer had agreed with LIUNA in another construction industry certification application that the individual had been at work in LIUNA's bargaining unit on the same application date. The Board ruled that the employer's agreement with LIUNA was not binding on the OE.

21. The second principle that LIUNA argues is well-established in the Board's jurisprudence is that an employee in the construction industry can only be in one bargaining unit on a given certification application filing date. In support of this proposition LIUNA relies on the following authorities:

- *Gilvesy Enterprises Inc.*, [1987] OLRB Rep. Feb. 220 in which the Board eliminated the use of the "representative period" test for determining whether an individual was at work in a construction industry bargaining unit on the date of application and adopted a test that focussed on whether the person was at work on the date of application performing bargaining unit work for a majority or his or her time.

- *E & E Seegmiller Limited*, [1987] OLRB Rep. Jan. 41 in which the Board again eliminated the use of the "representative period" test for determining whether an individual was at work in a construction industry bargaining unit on the date of application and adopted a test that focussed on whether the person was at work on the date of application performing bargaining unit work for a majority or his or her time.

- *The Cairn Group Inc. and Cairn Construction Ltd.*, 2003 CanLII 33650 (ON L.R.B.) (May 5, 2003) paragraph 7; *Eastway Construction Ltd.*, [2006] O.L.R.D. No. 2220 (June 13, 2006) paragraph 12; *Harnden & King Construction Ltd.*, [1987] OLRB Rep. Dec. 1510 paragraph 14; and *Gottcon Contractors Ltd.*, [1990] OLRB Rep. Jan. 25 paragraph 52 in which it was determined that, in construction industry applications for certification, an employee can only be in one bargaining unit at a single point in time.

- *H & B McLachlan Construction Ltd.*, [2000] OLRB Rep. May/June 483 (June 30, 2000) in which the employer filed three overlapping Schedule As in response to three separate construction industry certification applications filed on the same day. The unions agreed to the inclusion of the overlapping names on the lists and asserted that the employer could not then resile from its agreement regarding who was at work in the bargaining units on the date of application. The responding party submitted that the Board cannot validate the agreement of the parties as it contravenes Board policy that an individual can only be in one bargaining

unit on the date of application. The Board determined that it could not give effect to parties' agreements that are contrary to the provisions of the Act and determined that, for the purposes of a construction industry certification application, the Board will only consider an employee to be in one bargaining unit.

22. In LIUNA's submission, the placement by Graham of the 13 individuals on the OE Schedule A was a representation that those 13 people were at work in the OE bargaining unit on the date of application. As soon as both the OE and LIUNA indicated that they agreed with Graham's representation, an all party agreement existed. The agreement reached is binding and Graham cannot now resile from the agreement. In light of the fact that there is an all party agreement that the 13 individuals were at work in the OE's bargaining unit on the date of application, those same individuals could not have been at work on the date of application in the LIUNA bargaining unit. As such, the 13 names must now be removed from the LIUNA Schedule A.

23. LIUNA submits that the fact that all three parties agreed that the 13 individuals were at work in the OE bargaining unit on the date of application is sufficient to preclude Graham from taking a contrary position, however, they also submit that the OE suffered clear prejudice and detrimental reliance when it withdrew its certification application based on the agreement that the 13 were in the OE bargaining unit.

24. In addition to adopting the submissions of LIUNA, the OE argues that Graham's placement of the 13 names on the OE Schedule A was an offer that it held out to the Unions. When the Unions agreed with the inclusion of those 13 names on the OE Schedule A, there was a binding agreement. The agreement is a three party agreement whereby the parties agreed that the 13 individuals are in the OE bargaining unit on the date of application. If the 13 are in the OE bargaining unit, according to Board jurisprudence, they cannot be in LIUNA's bargaining unit on the same date.

25. The OE relies on the fact that Graham did not qualify the Schedule As in any way and points to *Corecon Developments*, [1985] OLRB Rep. May 657 at paragraph 5 where the Board determined that, in the absence of any reservation or qualification to the list of employees filed by the employer, the employer was bound by the list and could not subsequently add names to it. Based on *Corecon*, the OE submits that, having failed to qualify the LIUNA or OE Schedule A in any way, Graham is bound by the Unions' agreement to the OE Schedule A.

26. The OE further asserts that it relied on this agreement when it withdrew its certification application.

27. In response, Graham accepts that it is an established Board principle that parties will not be permitted to resile from an agreement. Graham submits, however, that there is a difference between resiling from an agreement and resiling from a position. In this case, Graham submits, it adopted the position in the OE and LIUNA certification applications that there were 24 individuals who were on both Schedule As. Graham has not moved from that position. Graham asserts that it placed these 24 names on both lists as, in the amount of time available to file its response, it was not able to determine what work these 24 people were doing on the date of application and further determine whether that work constitutes labourers' or operating engineers' work. The applications concern a relatively large number of employees. There are 85 names on the OE Schedule A and 129 names on the LIUNA Schedule A. Graham submits that the employees were spread out over 12 job

sites located in three Board Areas. According to Graham, the work being performed is, in some instances, work that could fall within either bargaining unit. Graham states that the task of determining what over 200 employees were doing on the date of application and whether that work is labourers' or operating engineers' work is not a simple task. In addition, having regard to the case of *Bonnechere Excavating Inc.*, 2006 CanLII 63561 (ON L.R.B.) (Oct. 16, 2006), in which the employer filed identical Schedule As in two separate construction industry certification applications that were filed on the same day and the Board found both unions to be in a certifiable position and certified them both, Graham states that it was not certain that any one employee could not be on both lists. Further, Graham was aware that, according to the Board's jurisprudence, it would not likely be permitted to add names to the list once the Schedule A had been filed with the Board. As such, out of an abundance of caution, not knowing which unit the 24 people fell within, Graham states that it placed the names of 24 individuals on both Schedule As.

28. Graham asserts that, to date, it is not sure which list these 24 people belong on and that it is only through the Board's processes for determining status disputes that the answer will be known. However, it is Graham's position that it has made it clear from the outset, by placing the names on both Schedule As, that it is not aware of which of the two bargaining units these people were working in on the date of application. In fact, Graham submits that it is not clear that the individuals could not be in more than one bargaining unit on the date of application. Graham argues that the Unions have been aware throughout the process that the 24 names appear on both the OE and LIUNA Schedule As.

29. In Graham's submission, given that it has not adopted any one position as to which one or both of the bargaining units the individuals in issue were working in on the date of application, it has not made any representation to the Unions. In the alternative, if the placement of names on the Schedule A amounts to a representation, Graham submits that, on the facts of this case, the placement of the 24 names on both Schedule As was a representation that the employer was not sure where the names belonged. It was not a representation that the 24 belonged on one list to the exclusion of the other list. Further, Graham argues that it was apparent to both Unions throughout that the 13 names appeared on both Schedule As. As such, the Unions were fully aware that the status of these 13 people was in issue. Graham acknowledges that there was no statement qualifying either Schedule A but argues that, on the facts of this case, such was not necessary.

30. In the submission of Graham the only agreements that have been recognized by the Board are those: recorded in an officer's report; reached at a Regional Certification Meeting; or set out in Minutes of Settlement. In this case, no such agreement exists. Rather, in the submission of Graham, the Unions are cobbling together fragments from various documents and letters to find an agreement. Graham asserts that there certainly was no representation from the employer that would have induced the OE to withdraw its application. In the submission of Graham, the OE withdrew its application in order to avoid the application being dismissed and a bar being imposed.

31. Relying on the definition of agreement from Black's Law Dictionary, Graham submits that the facts do not establish that an agreement was reached.

32. For the reasons that follow, it is my determination that the 13 names in issue do not have to be removed from the LIUNA Schedule A. First, it is my determination that Graham was not party to an agreement that the 13 individuals in issue were properly on the OE Schedule A. Second, it is

my determination that, in the circumstances of this case, even if such an agreement was reached, it became irrelevant when the application in respect of which it was reached was withdrawn.

33. As indicated above, the OE and LIUNA worked in concert to organize the employees of Graham. The applications were filed on the same day and each application specifically requested that it be listed for hearing together with the other application. Each union intervened in the other's application. Each union was aware of the list of employees filed by Graham in both applications. Each union knew that the 13 names in issue appeared on both Schedule As. While Graham did not specifically state that it was "qualifying" the Schedule As in any way, having regard to both Unions' knowledge of the employer's filings, the Unions were aware that the employer had not stated an unqualified position as to which of the two bargaining units these 13 people were in on the date of application. If Graham had made a representation that they were in the OE bargaining unit, it had equally made a representation that they were in the LIUNA bargaining unit.

34. According to the status disputes process that is currently in place, a trade union is not required to state its position in response to a responding party's Schedule A until the date of a Regional Certification Meeting when a Labour Relations Officer asks the union to do so. Where, as here, the responding party has filed a Schedule A that contains qualifications or reservations, a union is fully entitled to decline to state its position in respect of those qualified names until such time as the responding party states its unqualified position. This process serves to bind the employer to a position as to who was at work in the bargaining unit on the application date before it becomes aware of the union's position in response. This serves to limit the responding party's ability to take list positions based on strategic considerations.

35. Thus, in the instant matter, the OE and LIUNA were not required to state their positions in respect of the Schedule As Graham had filed with its responses at the time that they did so. They were entitled to wait until they were directed to do so by a Labour Relations Officer at the Regional Certification Meeting. Further, the OE and LIUNA were not required to state their position in response to a qualified Schedule A. They were entitled to decline to do so until such time as Graham adopted an unqualified position on the 13 individuals in question or the Board directed them to do so. However, the OE and LIUNA did not take steps to require Graham to provide unqualified Schedule As. They elected instead to state their position in response to Graham's qualified position. Given the absence of a firm position taken by Graham in respect of the names in issue, the OE and LIUNA could not, by stating their own position, create an agreement with Graham.

36. Having regard to the foregoing, I find that, while Graham did not explicitly qualify its Schedule As, it did so implicitly. While it might not have been evident to the Unions exactly what position Graham was taking with respect to the 24 people who were listed on both Schedule As, it was evident that Graham was not unreservedly stating that they were in one bargaining unit or the other. Thus, it is my determination that Graham did not agree with the OE and LIUNA that the 13 names in issue were properly on the OE list.

37. Even if what occurred here had been sufficient to constitute an agreement among Graham, LIUNA and the OE that the 13 names were on the OE list, in the circumstances of this case, I would not have found such agreement to have required the removal of the 13 names from the LIUNA list.

38. The Unions rely on the principle that an employee can only be in one bargaining unit on a single day to support their position that the 13 names must be removed from the LIUNA Schedule A.

39. A construction industry trade union can elect to have its application for certification dealt with under either section 8 or section 128.1 of the Act. Where a trade union elects to have its application dealt with under section 128.1, the Board is required by section 128.1(4) of the Act to make a determination as to the percentage of individuals in the bargaining unit who are members of the union "at the time that the application was filed". Under section 8, the Board is required to determine the percentage of individuals in the bargaining unit who appear to be members of the union "at the time that the application was filed".

40. The Board considers "the time that the application was filed" as being the date on which the application was filed. An employee is considered to be in a bargaining unit "at the time that the application was filed" if they spent a majority of their working time on the application filing date engaged in bargaining unit work. If one must spend a majority of their day engaged in one type of work in order to fall within a particular bargaining unit in the construction industry it simply follows that one can only be in one bargaining unit on the application filing date.

41. Where two applications for certification are filed on the same date, and all of the parties have agreed, or the Board has found, an individual to be in one of the two bargaining units, if the Board is then asked to decide whether that same individual was also in the second bargaining unit on the same date, the Board will almost certainly decline to permit a result that has the person in both bargaining units. That is because the Board will know that, at the end of the inquiry, it could potentially be asked to make a determination as to the level of both unions' membership support based on the employee being in both bargaining units.

42. That is categorically different from the present situation. In the present situation, the agreement relied upon by the Unions was reached and then the application to which the agreement related was withdrawn. There is no longer any potential that the Board will be asked to make any determination as to the OE's level of membership support based on that agreement. There is no longer any potential that the Board will be asked to determine LIUNA's level of membership support based on the same names as those relied upon by the Board to make a determination in the OE bargaining unit.

43. As a result of my determination herein, the 13 names in issue do not have to be removed from the LIUNA list. However, I do not accept Graham's assertion that it does not have to state an unqualified position as to whether these people are on the LIUNA Schedule A. Graham is incorrect in its contention that their proper characterization is to be determined by way of the Board's status disputes procedure.

44. Responding parties are required to file their Schedule A upon which they state their position as to who was at work in the bargaining unit on the date of application within the time lines set out in the Act and the Board's Rules (or any extension thereof that they might be granted). If the employer files a list that is qualified in any way, the employer must remove that qualification by stating its position before the union is required to state its position in response to the employer's list. Once the union has stated its position in response to the employer's list (by challenging names on the list or adding names to the list), the responding party can then agree to the union's challenges or continue to disagree. It is only the disagreements that proceed through the Board's status dispute process.

45. Graham is hereby directed to advise LIUNA, the OE (since it is an intervenor in this matter) and the Board as to its unqualified position in respect of all 24 people listed on the LIUNA Schedule A that were also listed on the OE Schedule A within five days of the date of this decision. Following receipt of Graham's position in respect of these 24 names, LIUNA and the OE are directed to advise Graham and the Board as to their position in response within a further five days.

46. This matter is referred to the Manager of Field Services for the conduct of a further Regional Certification Meeting.

47. I am not seized.

3083-08-M National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1917, Applicant v. **Guelph Products Collins & Aikman,** Responding Party

Conciliation – Reference – The Minister asked if he has the authority to appoint a conciliation officer, or if his power to appoint is overridden by a Stay Order issued under the *Companies' Creditors Arrangement Act* – The Board was challenged by the wording of the Court order staying the proceedings "in any court or tribunal" and by the uncertainty relating to the duration of the Stay Order, and its purported extension – On the one hand, the Board found that the appointment of a conciliator is not "a proceeding in a court or tribunal," as described in one paragraph of the Order; on the other hand, a further paragraph in the Order stayed "all rights and remedies" of any entity or government agency – Taking a cautious approach, the Board held that the appointment of a conciliator was a "right or remedy" and was therefore prohibited by the Stay Order – Reference answered in the negative

BEFORE: Brian McLean, Vice-Chair.

DECISION OF THE BOARD: March 3, 2009

1. Pursuant to section 115 of the *Labour Relations Act, 1995* (the "Act"), the Minister has referred the following question to the Board for the Board's advice:

> Does the Minister of Labour have the authority to make the requested appointment of a conciliation officer or is the power to appoint overridden by the CCAA proceedings in this matter?

2. The facts are straightforward and not in dispute. The National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1917 (the "Union") represents the employees of Guelph Products Collins & Aikman (the "employer"). The Union and the employer are parties to a collective agreement with an expiry date of January 31, 2009.

3. On November 26, 2008, the Union gave the employer notice to bargain a renewal collective agreement. It appears that the Union had been advised that the plant would close in 2011 and accordingly the parties were negotiating a closure agreement as part of the collective agreement.

On December 18, 2008 the Union requested that the Minister appoint a conciliation officer pursuant to s. 18 of the Act.

4. On December 22, 2008 the Union was advised that a conciliation officer would be appointed "provided that no valid objection is received from the" employer. On December 31, 2008 a conciliation officer was appointed.

5. On January 5, 2009 counsel for the employer advised Dispute Resolution Services that it had previously obtained an Order under the *Companies' Creditors Arrangement Act* (the "CCAA"). That Order was dated June 19, 2007 and was extended to July 30, 2007. By Order dated January 20, 2009 the Stay Period was extended until March 4, 2009. It is unclear from the materials filed if the initial Order was extended from July 30, 2007 until January 20, 2009.

6. The Court's Order provides in relevant part:

> 15. *THIS COURT ORDERS* that until and including July 30, 2007, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property of the Applicant except with the written consent of the Applicant and the monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.
>
> 16. *THIS COURT ORDERS* that during the Stay Period, except as provided herein, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property of the Applicant, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect any security interest, or (iv) prevent the registration of a claim for lien."

7. Upon receiving the employer's objection to the appointment of the conciliation officer the Minister referred the question to the Board for its advice. The Board directed that the parties file written submissions which they did.

8. The right of either the employer or the Union to request the appointment of a conciliation officer is set out in s. 18(1) of the Act as follows:

> **18.** (1) Where notice has been given under section 16 or 59, the Minister, upon the request of either party, *shall* appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.
>
> (emphasis added)

9. Under section 18(1) the Minister is required to appoint a conciliation officer at the request of either party. The Ministry does not have discretion. I also note that an appointment has been made in this case.

10. Three results flow from the appointment of a conciliation officer. First, the parties are provided with the benefit of an experienced mediator to assist in concluding a collective agreement (which includes in this case, a closure agreement). That benefit is consistent with the objectives of the CCAA. The second result is that if the parties are unable to negotiate a collective agreement the conciliation officer will issue what is called a "no board report". The issuance of the no board report triggers a seventeen day period following which the union has the right to strike and the employer has the right to lock-out. The institution of the right to strike appears inconsistent with the objective of the CCAA. Finally, the appointment of the conciliation officer, following the expiry of the collective agreement closes off the opportunity for another union to displace an existing union or for employees to terminate the union's bargaining rights.

Discussion

11. The employer submits that the CCAA "suspends the application of the OLRA" and therefore, in its view, the Minister of Labour has no authority to appoint a conciliation officer. I disagree. There is nothing in the CCAA which mandates that result. In my view, such an extreme conclusion would require very specific language. In my view, whether rights under the Act (or at all) are suspended depends on the Order made by the Court.

12. In some respects the material and facts placed before the Board by the employer are quite inadequate. The employer has provided two hand-written Court endorsements (*Re Stelco* June 14, 2004 and *Re Collins and Ackman Automotive Canada Inc.* February 20, 2008) – one of which is legible and one of which is quite difficult to read. Each of these endorsements granted leave of the Minister to appoint a conciliation officer. However, the Orders which were under consideration by the Courts are not included with the materials or set out in the endorsements. It is therefore impossible to tell whether the decisions are of direct assistance in understanding the Order in this case.

13. In addition, it is also impossible to tell from the materials whether the Order at issue before me was in effect on the date the Minister appointed the conciliation officer, December 31, 2008. All that I know is that the Order had an initial operating period which ran to July 30, 2007 and that the employer obtained an Order dated January 20, 2009 which extended the Order until March 4, 2009. Therefore, it is even impossible to say whether the Minister's December 31, 2008 conciliation officer appointment was potentially subject to the Order.

14. In any event, in this case, I am satisfied that paragraph 15 of the Court's Order does not prohibit the appointment of a conciliation officer.

15. My conclusion arises from the words "Court or Tribunal" in the Order. In my view, the filing of a request for the appointment of a conciliation officer may be a "proceeding", but it is not a proceeding in a Court or Tribunal. The Minister of Labour to whom the request is made is neither a Court nor a Tribunal. Moreover, the conciliation process triggered by section 18(1) of the Act is not a proceeding in a Court or Tribunal.

16. I accept that the words "proceeding" and "enforcement process" have broad meanings. However, here these words are modified by the words "any Court or Tribunal". In my view Wachowich J.'s decision in *Meridian Developments Inc. v. Toronto Dominion Bank* (1984) 11 D.L.R. (4th) 576 at para 27 is instructive:

> "I hesitate therefore to restrict the term "proceedings" to those necessarily involving a Court of Court official because there are situations in which to do so would allow non-judicial proceedings to go against the creditor which would effectively prejudice other creditors and make effective arrangement impossible. The restriction could defeat the purpose of the Act.... As a result, in the absence of a clear indication from Parliament of an intention to restrict "proceedings" to "proceedings which involve either a Court or Court Officials", I cannot find that the term should be so restricted. Had Parliament intended to so restrict the term, it would have been easy to qualify it by saying for instance, "proceedings before a Court or Tribunal" (emphasis added)

17. However, that is not the end of the matter. Paragraph 16 of the Order is also relevant. It is broader than paragraph 15 in that it refers to "all rights and remedies" of any "entity" or "government agency" (there was no suggestion that a union is not an "entity") "against or in respect of the Applicant". In addition, one of the exceptions to the stay is "statutory or regulatory provisions relating to health, safety or the environment" which may be seen as akin to rights under the Act.

18. Paragraph 16 of the Order is very broad. It appears to suspend virtually everything. Moreover, a broad interpretation is consistent with the way in which Courts have interpreted their own CCAA Orders. It is likely that the appointment of a conciliation officer is a right or remedy of a governmental body or agency or a union (an authority).

19. The Board is in a somewhat difficult position. It is not a bankruptcy Court, nor is it an appellate Court, but nevertheless it is being asked to interpret an Order of the Court. Given the "broad scope of action Parliament intended for" the CCAA (See *Meridian, supra*), under these circumstances it is appropriate to be cautious in doing so.

20. In my view, therefore, it is more likely than not that the Order prevents the appointment of a conciliation officer.

21. In addition, I note that the question asked of the Board was in the present tense – "Does the Minister of Labour have the authority ....", it is not "Did the Minister of Labour have the authority". The Minister already appointed a conciliation officer and it is unclear whether the Order precluded that appointment. In any event, given that appointment, it would appear that s. 18(4) of the Act by, implication, itself precludes the appointment of a second conciliation officer except after 15 months have passed.

22. For all of these reasons, the Board's advice to the Minister is that he does not have the authority to make the appointment of a conciliation officer.

2931-08-U; 2947-08-R International Brotherhood of Electrical Workers, Local 894, Applicant v. **Industrial Performance Solutions Inc. c.o.b. as Abacus Electric**, Responding Party

Certification – Construction Industry – Practice and Procedure – Unfair Labour Practice – The union asked the Board to convert its card-based application for certification to a vote-based one so it could seek relief under s. 11 of the Act – Although the union completed the application form using the sections applicable to card-based certification, it was clear from its answer to one of the questions on the form that it was invoking s. 11 – Furthermore, the union filed an unfair labour practice complaint at the same time that it filed its application for certification – The Board found that the erroneous completion of the application was inadvertent, that the union's intent to seek s. 11 relief was evident on the face of the application, and that no steps had been taken in the application that would prejudice the ability of the responding party to mount its defence – The applicant's motion to convert the application was granted – Matter continues

BEFORE: *Jack J. Slaughter*, Vice-Chair.

DECISION OF THE BOARD; March 27, 2009

1. Board File No. 2947-08-R is a certification application filed on December 22, 2008 by International Brotherhood of Electrical Workers, Local 894 ("the Union") with respect to Industrial Performance Solutions Inc. c.o.b. as Abacus Electric ("Abacus") pursuant to the construction industry provisions of the *Labour Relations Act, 1995,* S.O. 1995 c.1 as amended (the "Act"), which the Union elected to have dealt with under section 128.1 of the Act.

2. Board File No. 2931-08-R is an unfair labour practice complaint filed by the Union against Abacus on December 22, 2008 alleging Abacus committed various violations of the Act pertaining to the Union's organizing campaign.

3. The parties met with a Labour Relations Officer on February 18, 2009 and completed a Certification Worksheet on that day. The Certification Worksheet indicates four outstanding issues: (a) whether Board File No. 2947-08-R should be converted to a certification application under section 8 of the Act; (b) Abacus' section 8.1 notice; (c) the Union's entitlement to section 11 relief; and (d) employee status disputes.

4. Both parties have filed submissions on the outstanding issues.

5. The Board has now had an opportunity to review the parties' submissions.

6. The Union requests that Board File No. 2947-07-R be converted from a section 128.1 application to a section 8 application. On behalf of the Union, Ms. Mitchell says that the box on page 1 of Form A-71 was checked off to indicate a card-based application in error. She asserts that the Union's "reliance on certification under section 11 is manifest throughout the form" of the application. Question 11 of the application does contain a specific reference to section 11 of the Act. On the other hand, question 12 only applicable to section 128.1 applications was completed and that questions 13 to 22 only applicable to section 8 applications were not completed. Ms. Mitchell blames that on relying on a precedent used in another case before the Board, ironically one where the Board

went on to rule that it could convert a section 128.1 application into a section 11 application, namely *L & L Painting and Decorating*, [2006] OLRB Rep. May/June 385 (June 27, 2006).

7. Furthermore, Ms. Mitchell says that Abacus in any event made a timely section 8.1 objection, and there is no prejudice to Abacus from granting the conversion because the Union would not be entitled to a vote in the first place as it did not file membership evidence showing support from 40% of the employees in the bargaining unit. The Union relies on the Board's decisions in *L & L Painting and Decorating*, *supra*, and *Carlos Barbosa Concrete Ltd.*, (2007) 134 C.L.R.B.R. (2d) 8 (Ont.) (April 16, 2007).

8. Abacus urges the Board to deny the Union's conversion request. Abacus says there is no compelling reason to grant the Union's request. Abacus relies on the Board's decision in *Sarnia Paving Stone Ltd.* 2005 Can LII 44714 (November 28, 2005). Abacus says that other decisions where the Board has allowed a conversion such as *Marshall Homes Corporation* 2006 Can LII 13298 (April 18, 2006) and *Abcott Construction Ltd.*, 2007 Can LII 36374 (August 24, 2007) are distinguishable. Abacus says "an inadvertent error" is in and of itself not a compelling reason to permit the conversion of the present application to a section 8 application. Abacus also asserts "there is prejudice suffered by employers in this situation" in terms of the "loss of the ability to make a timely section 8.1 objection". However, Abacus did in fact make a timely section 8.1 objection in this case. Abacus also argues it was prejudiced by the "loss of the ability to commence a timely campaign in anticipation of a vote".

ANALYSIS AND DECISION

9. The Board's jurisprudence is now clear that a trade union which initially makes a section 128.1 certification application may request that the Board convert that application into a section 8 certification application because section 11 relief is only available in certification applications made pursuant to section 8 of the Act: *Southside Construction (London) Limited*, [2005] OLRB Rep. September/October 854 (Oct. 17, 2005); *L & L Painting and Decorating Ltd. supra.* The Board has the power to effect conversion of the application under Rule 40.5 of the Board's Rules of Procedure which provides that the Board "may allow a filing to be amended as the Board considers advisable".

10. The question to be answered is whether the Board should do so in the circumstances of the instant application.

11. The relevant facts are as follows. The Union applied for certification on December 22, 2008 in Form A-71. The Union ticked off the box indicating a section 128.1 card based certification application was being made. Question 12 which applies solely to section 128.1 applications was completed. Questions 13 to 22 which apply only to section 8 applications were not completed. However, question 11 contains a specific reference to the Union seeking certification pursuant to section 11 of the Act and to the filing of an unfair labour practice complaint under section 96 of the Act. The section 96 application was filed on December 23, 2008. Both applications were delivered to Abacus on December 23, 2008. Abacus filed a timely response to the certification application, including a timely section 8.1 objection, with the Board on December 29, 2008.

12. Abacus relies on the Board's decision in *Sarnia Paving Stone supra.* to establish the proposition that a "compelling reason" is required before conversion can be granted. However, the facts of that case are significantly different than those present in this case. In *Sarnia Paving Stone*,

the applicant did not seek to convert the application from a card based application into a section 8 application until more than two months had elapsed from the application date, and until after more than one month had elapsed after the date of the Regional Certification Meeting. Furthermore, the applicant did not provide the Board with any specific reason why the conversion should be granted. Instead, the applicant only said its request for conversion was a "precautionary step". In those circumstances, it is not surprising that the Board found there was no "compelling reason" to grant the conversion.

13. The instant case is much more similar to subsequent cases where conversion has been granted. In *L & L Painting supra.*, the Board essentially said that there are two relevant questions to be answered: 1) is there good reason to seek the amendment? 2) has there been some action taken in the file which causes material prejudice to the employer if an amendment is made? However, the Board did not have to deal with a specific amendment request.

14. In *Abcott Construction Ltd., supra,* the Board did deal with a conversion request in circumstances significantly similar to those present in this case. Counsel for the applicant therein had made an inadvertent error in opting for a card based application for certification. It was evident from the content of the application that relief under section 11 of the act was being sought. There was no proof of any prejudice to the employer if the amendment was granted. The Board held that an inadvertent error in the making of the application and a lack of prejudice to the employer favoured granting the conversion requested by the applicant therein.

15. Similarly in *Carlos Barbosa Concrete Ltd., supra,* the Board granted a trade union's conversion request. The application was filed prior to the Board's decision in *Southside supra.* wherein the Board first ruled that section 11 relief was not available in section 128.1 applications. However, the union had filed an unfair labour practice complaint the day after the certification application was filed, and sought section 11 relief therein. The union then sought conversion shortly after the release of the Board's decision in *Southside.* On these facts, the Board granted the conversion sought by the applicant. There was a good reason to grant the request, as the union had acted prudently based on the information available to it at the time. There was no prejudice to the employer because no steps in the application had been taken "that would not otherwise have been taken if the application had proceeded from the outset as an application under section 8 of the Act.

16. Likewise in *Marshall Homes supra,* in granting the conversion requested by the union therein, the Board found it important that the applicant indicated in its section 128.1 application that section 11 relief was being requested, and that the conversion did not "adversely affect or render unnecessary any of the steps that have been taken by either the Board or the responding parties".

17. The Board now turns to the facts of this case. From a careful review of the application, the Board finds that the applicant indeed made an inadvertent error in checking the section 128.1 box. Notwithstanding the completion of question 12, and the non-completion of questions 13 to 22, the information contained at question 11 contained both a specific reference to section 11 of the Act and an indication that a section 96 application was going to be filed. The section 96 application and the certification application were delivered to Abacus the very same day. The applicant was clearly trying to access section 11 relief and Abacus was put on notice of this fact immediately upon reading the materials. Therefore, the Board finds that the circumstances of the making of the application considered in total provide a good reason for granting the conversion.

18. On the second limb of the test, the Board finds there is no material prejudice to Abacus. No steps have been taken in the application that would prejudice the ability of Abacus to mount its defence. Abacus did file a timely section 8.1 notice. In any event, the Union concedes it does not have membership evidence on behalf of 40 percent or more of the employees in the proposed bargaining unit, so the section 8.1 notice is irrelevant. No vote was ordered. In terms of the analysis by the Board used in *Carlos Barbosa supra,* no steps have been taken herein that would not otherwise have been taken if this application had proceeded as a section 8 application. Abacus is able to raise each and every defence available as if this application had been filed as a section 8 application from the outset.

19. Therefore, both limbs of the test have been met.

20. Accordingly, the motion of the Union must be granted. The Board hereby converts Board File No. 2947-08-R into a section 8 certification application.

21. The Union's entitlement to section 11 relief will turn on the outcome of the section 96 complaint. Therefore, the Board directs that both of these files be scheduled for hearing together before one panel of the Board.

22. There are two employee status disputes in the certification application. The Union seeks to add Mark Carr to the list of employees, and to exclude Lonny McGarvey therefrom. Abacus takes the opposite position in each case. It appears to the Board that the employee status disputes are intertwined with the section 96 complaint and that both issues should proceed at the same time. The Board directs that Abacus proceed with its evidence first. All other issues of procedure are remitted to the hearing panel.

23. These matters are hereby referred to the Registrar to set hearing dates.

24. This panel is not seized of these matters.

3112-08-ES Polar Bear Geo-Thermal Systems Inc., Applicant v. Michael Mai and Elissa Mai and Director of Employment Standards, Responding Parties

Employment Standards – Application for review of two Orders to Pay issued under the *Employment Standards Act, 2000* – At issue was whether a former employee of Polar Bear was entitled to a specific calculation of overtime pay on the basis that the hours he spent travelling to client locations, for which he was paid a lower rate than his work rate, constituted working hours – The Board found that, while travelling, the employee was performing work for the company which was corollary to his principal duties – Nothing in the Act or Regulations expressly indicates that travel time to a client's worksite should not be considered working time – The purpose of the Act is to confer benefits, and exceptions to entitlement are to be construed narrowly – The employee was entitled to overtime pay as calculated by the Employment Standards Officer – Application dismissed.

BEFORE: *Mary Anne McKellar*, Vice-Chair.

APPEARANCES: *Dennis Campbell* and *Tatyana Parfenyuk* appearing for the applicant.

DECISION OF THE BOARD: April 9, 2009

1. This is an application for review pursuant to section 116 of the *Employment Standards Act, 2000,* S.O. 2000, c.41, as amended ("the Act").

Introduction

2. This file relates to applications for review of two separate Orders to Pay (Nos. 13716 and 13717) issued under the *Employment Standards Act, 2000* ("the Act"). The applicant ("the Employer") filed separate applications for review with the Board at the same time and in the same envelope. It appears that Board staff responsible for processing the application forms failed to realize that two separate Orders to Pay were at issue. The consequence is that only one file was opened, and that only one responding party employee ("Michael Mai") received notice of this proceeding and of the hearing. Michael Mai's wife, Elissa Mai, in whose favour the other Order to Pay issued was never advised that the Employer had applied to review it and was not provided with notice of the hearing.

3. I convened a hearing into both applications on March 25, 2009. Michael Mai was not in attendance at the scheduled start time of 9:30 a.m. In accordance with the Board's usual processes, I did not start the hearing until after 10:00 a.m., in the event he had merely been unavoidably delayed. He was still not in attendance at that time. The hearing proceeded in his absence.

4. The hearing also proceeded in the absence of Elissa Mai, although as noted, she had not received notice of it. In the circumstances of this case, this is not a fatal defect. I have determined (for reasons set out below) that the Order to Pay that issued in her favour should be upheld in its entirety. Consequently she has suffered no prejudice by the Board's failure to provide her with Notice of the Hearing.

The Facts

5. I heard testimony from Dennis Campbell, the sole officer and director of the Employer, and from Tatyana Parfenyuk, the Employer's Executive Assistant.

6. The Employer is in the business of installing geothermal heating and cooling systems. Its business premises are in Toronto, but its clients are at various locations in the province. Michael Mai was engaged in the hands-on work of installation at clients' sites. He and his wife were each employed for approximately 3 months. They quit their employment.

7. The Employer pays employees such as Michael Mai when they have to travel to perform their work. The payment was characterized by Dennis Campbell as a "travel stipend", but it is a bit unusual in that it does not take the form of a fixed *per diem* or any kind of travel expense reimbursement. Rather, it is paid at the rate of $12.00 per hour of travel time. Further, I understand that Michael Mai travelled to job sites in a vehicle owned by the Employer.

8. Aside from the time he spent traveling to and from client locations, Michael Mai was paid at the rate of $15.00 per hour (according to the Employment Standards Officer) for all hours actually worked on site up to 44 per week and at a premium rate of 1.5 times that for hours worked on site in excess of 44 per week. I did not understand Campbell to suggest that $15.00 was not the hourly rate at which Mai was paid, but he did assert (as set out in paragraph 10 below) that it should not be considered to be Michael Mai's wage rate. The Employment Standards Officer in determining whether Michael Mai was entitled to overtime in any given week had regard to whether the total of his hours worked on site and his hours spent travelling exceeded 44.

9. The Employment Standards Officer found that each of the Mais worked on Good Friday and Victoria Day and were paid for that work but not provided with a substitute day off with pay. At the hearing, Campbell brought no records but asserted that Michael Mai did not work on those two public holidays and was not paid for them. During the week in which the public holidays fell, he was instead paid only for the hours he actually worked on-site (at $15.00 per hour up to 44 hours) or for any travel time (at $12.00 per hour). Campbell also asserted that Elissa Mai was only paid for the hours she actually worked in the weeks in which public holidays fell. There were two public holidays during her brief tenure with the Employer. Campbell stated that she did not work on either one of them, and was not paid for them.

10. Campbell attempted to explain to me why his system of paying employees complies with the Act insofar as public holidays are concerned. If I understand him correctly, the assertion is that the rate at which employees are paid is not their wage rate. Their actual wage rate is much lower and unspecified and variable but at least equal to the minimum wage. This actual wage rate is then "grossed up" or "bonused up" on each pay. In this way, the amount employees are paid actually exceeds what their wage rate and any public holiday pay entitlement would equal. Further, their wage is variable from pay period to pay period, depending on whether there is a public holiday within that pay period. Campbell also noted at a couple of points in his testimony that he could not afford to pay employees for days (i.e. public holidays) when they are not working. He also asserted that all of his employees, including the Mai's were well aware that this was how the matter of public holidays was dealt with by his company.

11. Campbell asserted that vacation pay was paid on each pay cheque. He indicated that he marked it on "most" stubs. He also assrted that the Mais were well aware of and agreed to this practice when they were hired. He did not bring in copies of any of the cheques or pay stubs issued to the Mais. The Employer's Executive Assistant also testified. She did not commence her employment with the Employer until after the Mais had quit their employment. She had no actual familiarity with any documentation that they might have received along with their paycheques. She was only able to testify that since she started working for the Employer she now clearly indicates to employees that 4% vacation pay is being calculated on their earnings each pay period.

12. Michael Mai's last day of employment was May 24, 2007. He had been working at a client site in Huntsville along with at least one other employee. Campbell testified that he spoke to Mai that morning around 10:30 a.m. and that Mai told him he was quitting and was on his way back to Toronto with the truck. Campbell was at the time in another vehicle on the way to Hunstville. Campbell testified that he reached the work site in Huntsville around 11:00 or 12:00 and that Mai was nowhere to be seen, nor did he see him for the balance of the day. Campbell understood from people back at the workplace in Toronto that Mai had dropped the Employer's truck off at approximately 3:30 p.m. Neither the employee(s) who were working with Michael Mai in Huntsville nor any

employee who was present when he returned the truck testified. Campbell's contention to me was that Michael Mai ceased to be entitled to any further payments from him as of 10:30 a.m. when he uttered the words "I quit", and that in fact his continuing to drive the company vehicle at that point constituted theft. All these things were said at the hearing only. I note that the Employer in its application for review did not take issue with the Employment Standards Officer's finding that Michael Mai was owed wages for his last day of work, but instead contested the claims for vacation pay, public holiday pay and overtime.

13. Campbell repeatedly insisted that both of the Mais, along with all of the Employer's other employees were aware of and consented to the manner in which the Employer dealt with vacation pay, public holiday pay and overtime. He contended that Michael Mai's awareness and his tacit acknowledgement that he was paid all he was owed can be inferred from his failure to have filed a claim under the Act during the currency of his employment. Campbell dismissed as "mere conjecture" my observation that Mai could not have known until after he quit and his last paycheque issued that he would not be paid for his last day of work nor any amount in respect of accrued vacation pay.

Analysis

14. I find I am not able to rescind Order to Pay No. 13717 insofar as it relates to amounts found owing to Michael Mai for May 24, 2007. The Employer did not raise in its application the fact that it was contesting these findings. It would be unfair in law to permit it to do so at the hearing, particularly in the absence of Michael Mai. I therefore confirm that Michael Mai is owed $109.20 for May 24, 2007.

15. The Act precludes any agreement to waive an employment standard. This is pertinent to the public holiday pay issue. See section 5 of the Act:

> **5.** (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void.
>
> (2) If one or more provisions in an employment contract or in another Act that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract or Act apply and the employment standard does not apply.

16. There was no dispute that the two public holidays that occurred while Michael and Elissa Mai were employed by the Employer fell on days on which they would otherwise have been working. There is some uncertainty as to whether they were given these days off, but were not paid or worked and were paid for those days but not provided with substitute days off with pay. Regrdless of which scenario accurately describes what occurred, the Employer did not comply with the Act.

Section 26(1) requires:

> **26.** (1) If a public holiday falls on a day that would ordinarily be a working day for an employee and the employee is not on vacation that day, the employer shall give the employee the day off work and pay him or her public holiday pay for that day.

17. The formula for calculating the amount of public holiday pay is set out in section 24(1)(a) of the Act:

> **24.** (1) An employee's public holiday pay for a given public holiday shall be equal to,
>
> (a) the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20; or

18. The provisions that apply where employees agree to work on a public holiday and becomes entitled to a substituted day off with pay are set out in section 27(1) and 32:

> **27.** (1) An employee and employer may agree that the employee will work on a public holiday that would ordinarily be a working day for that employee, and if they do, section 26 does not apply to the employee.
>
> ***
>
> **32.** If the employment of an employee ends before a day that has been substituted for a public holiday under this Part, the employer shall pay the employee public holiday pay for that day in accordance with subsection 11(5).

19. Unlike vacation pay, there is no alternate formula in the Act for calculating or paying public holiday pay. Campbell's contention that the Mais (and indeed the Employer's other employees) should be considered to have been in receipt of a fluctuating wage rate which bore little or no relation to the gross amount of their paycheque is merely an attempt by him to avoid paying people (in his own words) for "hours they did not work". The Act, however, requires him to do so. Furthermore, if I were to accept his method of determining the amount of the paycheque that should issue (some unspecified wage rate grossed up by some unidentified multiplier), that practice would clearly fly in the face of section 12(1) of the Act, which requires that the process by which the amount of the paycheque is arrived at be completely transparent:

> **12.1** On or before the day on which the employer is required to pay wages under subsection 11(5), the employer shall provide the employee with a written statement setting out,
>
> (a) the gross amount of any termination pay or severance pay being paid to the employee;
>
> (b) the gross amount of any vacation pay being paid to the employee;
>
> (c) unless the information is provided to the employee in some other manner, how the amounts referred to in clauses (a) and (b) were calculated;
>
> (d) the pay period for which any wages other than wages described in clauses (a) or (b) are being paid;
>
> (e) the wage rate, if there is one;

> (f) the gross amount of any wages referred to in clause (d) and, unless the information is provided to the employee in some other manner, how that amount was calculated;
>
> (g) the amount and purpose of each deduction from wages;
>
> (h) any amount with respect to room or board that is deemed to have been paid to the employee under subsection 23(2); and
>
> (i) the net amount of wages being paid to the employee.

20. For the foregoing reasons, the Orders to Pay are confirmed insofar as public holiday pay owing to Michael and Elissa Mai is concerned.

21. I turn now to the question of vacation pay. It is permissible under the Act to pay vacation pay at a rate of 4% of the earnings of each pay period, but only where: (1) the employee agrees to that arrangement; and (2) the calculations are clearly indicated on the wage statement. These provisions are set out in section 36(3) of the Act:

> **36.** (3) The employer may pay the employee vacation pay that accrues during a pay period on the pay day for that period if the employee agrees that it may be paid in that manner and,
>
> (a) the statement of wages provided for that period under subsection 12(1) sets out, in addition to the information required by that subsection, the amount of vacation pay that is being paid separately from the amount of other wages that is being paid; or
>
> (b) a separate statement setting out the amount of vacation pay that is being paid is provided to the employee at the same time that the statement of wages is provided under subsection 12(1).

22. Even assuming that the agreement contemplated in section 36(3) does not need to be in writing, but may be verbal, and even assuming that the Employer had such agreements with the Mai's, the Employer was not able to supply me with evidence that it had complied with the requirements of section 36(3)(a) or (b). It brought no evidence that each pay period's wage statement clearly indicated the amount of vacation pay that was being paid. The Employer brought no documents to the hearing, and Campbell's oral testimony was that he "mostly" included such indication. I therefore must confirm the amounts of vacation pay found owing to Elissa Mai. As the calculation of the amount of vacation pay owing to Michael Mai is dependent on whether he is entitled to overtime pay, I turn to that question first.

23. The question of whether Michael Mai is entitled to overtime pay turns entirely on whether the hours he spent traveling to client's locations and for which he was paid at an hourly rate of $12.00 are characterized as working hours. If those hours are properly characterized as working hours, then it appears there is no dispute that the calculation that the ESO made respecting the amount of overtime owing is correct. The Employer's contention appears to be that those are not working hours and that he was not even required to pay employees for them. While he was travelling, it appears that Michael Mai was either driving in or a passenger in, a vehicle owned by the Company, and carrying tools and materials required for the on-site installation of the heating and cooling equipment at the

client's premises. He was in the care and control of the Company's vehicle and/or equipment and *traveling for the purpose of servicing a client of the* Company. In these circumstances, I think it would be difficult to conclude that he was not performing work for the Company. The fact that what he was doing was corollary to his principal duties (the actual installation of equipment) does not mean it was not work, but it is reflected in the fact that it attracted a lower rate of pay.

24. I have carefully examined the regulations to the Act, which contain some provisions respecting when an employee is deemed to be performing work and when s/he is not. These provisions primarily address on-call situations. They are not applicable here. I find that nothing in the Act or regulations expressly indicates that travel time to a client's worksite should NOT be considered working time. In my view, such an express provision would be required to compel me to conclude that Michael Mai was not performing work when he traveled to client's job sites. The legislative scheme of the Act and regulations as a whole is one that confers benefits. The case law has consistently held that it must be given a large and liberal interpretation, and that exceptions to its benefits are to be construed narrowly. I therefore find that Michael Mai was indeed entitled to overtime pay, in the amount calculated by the Employment Standards Officer. It therefore follows as well, that he is entitled to Vacation Pay in the amount also determined by the Employment Standards Officer.

Disposition

25. Both Orders to Pay are confirmed in their entirety.

1755-07-R; 1910-07-R; 1142-07-U United Food and Commercial Workers International Union (UFCW Canada), Applicant v. **PPG Canada Inc.** and/or Liberty Staffing Services Inc. and The Staffing Edge Inc., Responding Parties; United Food and Commercial Workers International Union (UFCW Canada), Applicant v. PPG Canada Inc.; Liberty Staffing Services Inc. and The Staffing Edge Inc., Responding Parties.

Bargaining Unit – Certification – Employer – Related Employer – The union applied for certification to represent employees in a satellite plant of PPG, and for a declaration under section 1(4) of the Act that PPG was related to two other employers: Liberty Staffing Services Inc. (Liberty), a temporary employment agency sub-contracted by PPG to provide employees at the satellite plant, and the Staffing Edge Inc. (TSE), a company providing human resource services – The Board determined that the pre-conditions necessary for PPG, Liberty and TSE to be found related employers were satisfied – Although there was no degree of common ownership, PPG, Liberty and TSE were engaged in associated and related activities at the facility – There was joint decision making about employees at a practical level, a shared premises, and joint control of employees – Despite the fact that PPG and Liberty were in a genuine sub-contracting relationship, the Board chose to exercise its discretion to make a s. 1 (4) declaration for PPG and Liberty on the basis that there was an essential community of interest between the companies and bargaining with either one of them alone would be enormously difficult –The application against TSE was dismissed on the basis that it was an employer in name only – Certificate issued

BEFORE: *Brian McLean*, Vice-Chair.

APPEARANCES: *John Evans* for the union; *Clarke L. Melville* for Liberty Staffing Services Inc. and The Staffing Edge Inc.; *Michael McFadden* for PPG Canada Inc.

DECISION OF THE BOARD: March 27, 2009

1. Board File No. 1755-07-R is an application for certification, Board File No. 1910-07-R is an application under section 1(4) of the *Labour Relations Act, 1995* (the "Act") and Board File No. 1142-07-U is an application under section 96 of the Act. The Board held several hearing days over many months to receive the parties' evidence and arguments regarding these applications.

2. These applications concern the employees of a facility operated by PPG Canada Inc. ("PPG") located in Cambridge. The union applied for certification to represent the employees in the facility and identified each of the responding parties as employers of the employees who were the subject of the application. The Board ordered a representation vote. The union was successful in the representation vote, so there is no doubt that it is entitled to represent these employees. The only issue is which of the responding parties is/are the employer?

3. PPG objects to the certification and s. 1(4) applications as against it; it asserts that it has no employees in the bargaining unit applied for. Liberty Staffing Services Inc. ("Liberty") agrees with PPG; it says the employees at issue are its employees. PPG's position arises out of the fact that all of the employees were, at least nominally, employees of Liberty, a temporary employment agency. As a result of the position taken by PPG and Liberty the union applies under section 1(4) of the Act alleging that PPG, Liberty and a payroll/human resources services company, The Staffing Edge ("TSE"), should be declared a single employer under the Act and that together they should be certified.

4. The matters came on for hearing. The parties led evidence and argument with respect to three issues:

(i) which responding party is the "true" employer of the employees in question;

(ii) regardless of which entity is the true employer, should two or more of the responding parties to the s. 1(4) application be declared a single employer; and

(iii) did one or more of the responding parties engage in an unfair labour practice.

The Facts

5. Although the parties spent several days leading evidence and cross-examining witnesses, it is apparent that there are few facts in serious dispute. The witnesses called to give evidence were, for the most part, honest and straightforward. In particular I commend Tara McKie, the Director of

Operations of Liberty for giving forthright disinterested evidence. Where there is any dispute between witnesses I accept her evidence over any other.

6. PPG is a large publicly traded producer of automobile glass, with its headquarters in Pittsburgh, Pennsylvania. It has operations in several locations throughout North America which provide glass parts (windshields, back windows etc.) to most of the major car makers. It has three types of operations. Flat glass is manufactured by PPG at a flat glass plant. In a fabrication plant, flat glass is shaped and worked to create windshields, back windows and side door glass. These operations are large facilities and the employees are generally represented by auto industry trade unions and have been for some time. Among other locations, PPG has a fabrication plant in Oshawa.

7. PPG has a third type of operation which it calls a satellite plant. At a satellite plant workers make additions to the glass worked in its fabrication plant so that the glass is ready to install into one of its customer's cars. As an example, one of the jobs done at a satellite plant is to attach clips to side window glass. These additions are dictated by the customers to precise specifications. The customer supplies a limited number of special racks on which finished glass is placed for shipment to the customer. The racks are designed and owned by the customer and are meant to fit into the customer's assembly line. These racks have the effect of controlling the number of windows which can be produced at the satellite plant because PPG does not complete more windows than can fit in the racks. As a result there is little or no inventory and if there are no racks then there is no work.

8. Satellite plants are a relatively recent innovation. Previously, the satellite plant work was done by the car makers at their assembly plants. However, the car makers decided to contract out this work and PPG built satellite plants to bid on it.

9. The plant which is the subject of this application is a satellite plant. The plant supplies glass to Ford, General Motors, Chrysler and Toyota among others. Approximately 60 employees work at the facility. Generally there are two or three shifts depending on production requirements.

10. The Cambridge plant operates on a "just in time" basis. What that means is that PPG bids on work for Cambridge to supply glass for a particular model of car. The contract is usually for four years. The customer, on a weekly basis, forecasts the number and type of pieces of glass it will require for the upcoming week and forwards that information to PPG for planning purposes. Then the customer electronically makes specific orders on a daily basis for delivery the next day. Product is shipped within hours of being ordered.

11. There can be wide fluctuations in the number of parts required on a daily basis by customers. However, as a practical matter this did not, on the evidence, appear to happen very often at least during the period around and before these applications. Indeed, it appears at the time of the application, and before, customer demand for parts is fairly stable. As a result, employment levels at the Cambridge plant were also fairly stable during those times.

12. Nevertheless, the satellite plants are operated to account for potential changes in demand. The reason there are satellite plants at all, and the work is not performed at the fabrication plants is, in addition to the need to be close to customers, to avoid the collective agreements at the fabrication plants. PPG needs to pay lower wages to be competitive and requires flexibility, which is not, in its mind, available under its fabrication plant collective agreements.

13. In order to achieve both flexibility and cost savings, PPG uses temporary employee agencies to supply labour at many of its satellite plants. At Cambridge (and before that at Kitchener) since at least 1999 PPG has engaged Liberty (and its predecessor Armour Staffing) to supply 100% of its labour needs (the "associates"). Liberty is a corporation with nine offices across Ontario and is managed by Ms. McKie. It has 240 clients who are supplied with roughly 1000 associates on any given week. It has 30,000 individuals in its database. Liberty does not share officers or directors with PPG. None of its shares are owned by PPG. The two companies have a commercial relationship, not a corporate connection.

14. PPG and Liberty have a written agreement which they agree applies to Liberty's (the "Contractor" in the agreement) supply of labour to PPG. It contains a number of clauses which are relevant to the issues before the Board:

> 1. SERVICES
>
> (a) Contractor shall assign on a temporary/contract basis an employee of the contractor with the skills required by PPG to perform all of the services shown on and called for herein and by a purchase order issued by PPG to Contractor which references this Agreement. Upon acceptance by Contractor, in writing or by commencement of services, each such purchase order shall be an "Accepted Purchase Order". Each Accepted Purchase Order issued against this Agreement is incorporated by reference exclusive of any terms and conditions inconsistent or in conflict with this Agreement in which event the terms and conditions of this Agreement shall control.
>
> (b) Contractor acknowledges that a PPG Purchase Order is required to authorize Contractor to provide services under this Agreement. The Purchase Order must contain reference to this Agreement, and include scope of work, fees and start and completion dates.
>
> ...
>
> 3. CONTRACTOR'S EMPLOYEES
>
> Contractor agrees that it will:
>
> (a) Prior to assigning any employee of Contractor to work for PPG pursuant to this Agreement, review employment history of such employees and provide such history to PPG. Contractor agrees that PPG may refuse any such employee and such employee shall not be assigned by Contractor to render services to PPG pursuant to this Agreement;
>
> (b) Maintain a list of employees and their employment history assigned by it to render services to PPG pursuant to this Agreement, such list and employment history to be delivered to PPG upon request;
>
> (c) Upon written notice from PPG that any employee assigned to PPG hereunder is unacceptable to PPG, shall within two (2) business days of receipt of such notice, replace that employee with a substitute employee that is acceptable to PPG. If any employee assigned to PPG ceases to be an employee of Contractor during the term of this Agreement through conditions other than provided for in Subparagraph 3(d), Contractor shall be obligated to provide PPG with a substitute

employee acceptable to PPG within two (2) business days of termination of employment with Contractor. Contractor shall compensate PPG a reasonable amount as mutually agreed to for lost productive time due to the necessity to provide appropriate training to the substitute employee to reach the level of service provided by the departing employee.

(d) Upon written notice to Contractor, PPG shall have the right to offer employment to any employee of Contractor after six (6) months' total service by such employee to PPG. PPG shall have no obligation to compensate Contractor in any manner because of such offer or acceptance of employment. This Paragraph 3 shall survive the termination of this Agreement.

4. PERFORMANCE BY CONTRACTOR

(a) Contractor agrees that its employees will perform services hereunder with that standard of care, skill and diligence normally provided by a professional person or entity in the performance of such services. PPG reserves the right to review resumes showing technical qualifications and experience of the employees of Contractor who shall render services under this Agreement. Contractor is hereby notified that PPG will be relying on the accuracy, competence and completeness of the services provided by Contractor's employee.

...

(d) Contractor agrees to provide Contractor's employees with a copy of PPG's Business Conduct Policies, then currently in effect, and with the Worldwide Code of Ethics, then currently in effect.

...

9. INDEPENDENT CONTRACTOR

(a) The status of Contractor shall be that of an independent contractor. Nothing in this Agreement shall be construed as being inconsistent with that status. All of Contractor's activities shall be at its own risk. Contractor and thus Contractor's employees shall not be entitled to any of PPG's employee benefits, including any group insurance, pension and benefit plans, nor shall any benefits be made available to Contractor. Contractor shall pay the contributions measured by the wages of its employees required to be made under the Employment Insurance, Social Insurance and Retirement laws or similar laws, local, Provincial and Federal, applicable to the Work. Contractor shall accept exclusive liability for said contributions and shall indemnify, defend and hold PPG harmless from any and all liability arising therefrom.

(b) Contractor agrees to accept full responsibility for its employees under the Employment Standards Act and shall indemnify, defend and hold PPG harmless from any and all liability arising therefrom.

15. At the Cambridge facility Liberty provides associates on a basis that is relatively common to agency relationships across the province and is familiar to the Board. That is, PPG runs the business at the plant. It decides what equipment is to be used, and what products are to be built. It decides the hours of work and the number of shifts. Liberty supplies associates required to produce parts and PPG pays Liberty an amount to cover virtually all of the costs of the associates plus a mark-

up to Liberty to cover overhead and provide a profit. Liberty (through TSE) pays the associates and makes all government remittances on their behalf. For its mark-up, Liberty's job is to provide the correct number of productive and disciplined associates to ensure that PPG can produce its components as required. This is a challenge to Liberty as PPG requires that the associates be paid wages which are so low that it is difficult for Liberty to attract and retain associates.

16. The system works like this at its most basic. PPG receives production requests from its customers. PPG's logistics supervisor delivers those requests to Liberty's floor supervisors and the products are built and shipped by the associates.

17. Once Liberty assigns an associate to PPG that associate is generally not removed by Liberty although associates may leave on their own account. Accordingly, and despite Liberty's position that associates are temporary and may elect to work or not, many associates appear to have been working at PPG on a more or less full time permanent basis for many months or even years. The PPG assignment is in no real sense a temporary one for many associates.

18. All associate files are maintained by Liberty. PPG keeps no associate files. PPG may ask to see an associate's file when it conducts health and safety audits, in order to ensure that they have received proper health and safety training.

19. While these circumstances are typical in many respects of the staffing agency situations the Board has seen many times before, in some respects it is very different. PPG has only five individuals on site, all of whom are likely managers. PPG's entire non-managerial workforce is supplied by Liberty. More importantly, not only does Liberty provide all of the employees, it also provides one or more supervisors for each shift (who receive direction from PPG directly) and an on-site representative (and her assistant) whose job it is to ensure that enough employees are in place and to deal with associate issues that arise in the workplace. The salaries of the supervisors and on-site representatives are paid by Liberty and reimbursed by PPG in the same way that the associates are. The mailing address of Liberty's on-site representative is the same as the PPG plant.

20. Local PPG management and the Liberty supplied floor supervisors have frequent contact during the day. Local PPG management and the Liberty on site representative meet at least once every day. In addition, local management of PPG and Ms. McKie and the on-site supervisor meet once every two weeks primarily to discuss how Liberty is doing in delivering adequate numbers of associates to PPG to meet its needs. Liberty has one office on the PPG site which is furnished by PPG. It does not pay rent. It keeps associate files in the office.

21. PPG advises Liberty of its daily labour requirements and the places on the production line which need to be filled and Liberty attempts to find enough trained bodies to fill those requirements. PPG's requirements are based on a formula it devised.

22. The Liberty on-site representatives recruit, select, train, orient, manage day to day concerns, supervise, evaluate, and discipline associates at PPG. The Liberty on site representative decides in which section of the plant individual associates are going to work. Liberty's goal is to fulfill its client's needs.

23. Another unusual aspect of this arrangement is the reasonably significant involvement of TSE. TSE is a firm which provides a number of human resource services for many staffing agencies

who are members of TSE's "The Staffing Group". Liberty pays TSE a fee for a variety of services. TSE is involved in the relationship between PPG and Liberty in several ways. TSE provides Liberty with software ("staff track") that Liberty uses to keep track of its communications with associates. Supervisors at PPG do not have access to this, but the Liberty on-site client care specialist does. TSE also provides information which allows the clients to create and merge employee schedules.

24. TSE manages the staff track database. TSE also issues paycheques, processes direct deposits, makes source deductions, provides records of employment and employment letters. PPG approves hours and Liberty issues an invoice. Invoices get paid by PPG to TSE; Liberty does not see the PPG cheques. TSE sends Liberty a timesheet for each associate which then verifies the hours and sends it to TSE. TSE then issues an invoice to the customer (in this case PPG) which pays TSE. TSE then bills Liberty. TSE assists Liberty with the collection of invoices.

25. Under the agreement between TSE and Liberty "all staff assigned to [Liberty's] customers will be the employees of [TSE]". This fact is not mentioned in the employment contract between Liberty and its associates nor is it mentioned in the contract between Liberty and PPG. TSE is named on employees' T-4 slips as the employer. It is also the nominal employer for WSIB and Revenue Canada purposes, conducts WSIB risk management and deals with the WSIB. As a result, under the agreement between Liberty and TSE, Liberty must notify TSE of any on the job injuries to its associates. Liberty also notifies PPG of such injuries.

26. TSE provides these services to Liberty for all of Liberty's clients not just in relation to PPG.

27. TSE does not participate in the day to day direction of associates in any way. TSE does offer associates modified work following a workplace inquiry. The form set to employees by TSE states "Please be advised that Staffing Edge (through Liberty Staffing) is offering you modified work at no wage loss starting …". Modified work can be provided at the Liberty office.

28. PPG is primarily responsible for the working conditions at the plant. That is, it is responsible for air quality, lift devices, safety equipment and other equipment etc. Liberty may go to PPG about issues it has with working conditions. For example it went to PPG to ask that lockers be put in the plant and that additional tables and chairs be put in the lunchroom. PPG agreed to pay for these items. Like PPG, Liberty has a concern about isocynites (a glass by-product) at the plant and shares with PPG the cost of testing of employees for exposure.

29. Liberty and PPG have a close commercial relationship in Cambridge. The way the organizations reacted to the union's organizing campaign is demonstrative of this. While PPG took the lead in responding to the union organizing, there was significant co-ordination of responses. In this regard PPG's plant foreman, John Mulder coordinated the information gathering about the presence of union organizers at the facility. Mulder "instructed" Doug, a Liberty supervisor, to be at the plant gate (presumably to watch for union organizing activity) and gave "him information on what he is allowed to do". This reflected the reality that the union organizing campaign was a significant issue for PPG and of somewhat less concern for Liberty.

30. Part of PPG's strategy in dealing with the union organizing campaign was to have Liberty make associates understand that Liberty was the employer and not PPG. PPG had recently faced an allegation that it was a "co-employer" at one of its locations in the United States and was highly

attuned to this issue. Accordingly, it instructed Liberty to have a meeting with the associates to convey to them that Liberty, and not PPG, was their employer and to advise them of the benefits of staying non-union. Despite the fact that Ms. McKie (as she testified) did not care if the associates were unionized, Liberty agreed to have two meetings with associates because PPG wanted it to do so. At the request of Mulder, in advance of the meeting, PPG reviewed the speech which was to be given to associates by Liberty.

31. At the U.S. location when the "co-employment" issue arose, PPG's staffing agency there had, at PPG's direction, a similar meeting with employees. The U.S. situation is referenced in an e-mail from Cindy LaRocque – who was overseeing the Cambridge union organizing situation from the U.S. to a member of PPG's management in the U.S.:

> As I discussed with Steph, it is my opinion that someone, either PPG or contract employer, The Staffing Group (Liberty), needs to formally communicate to the workforce at Cambridge that PPG is not their employer. Having been through the co-employment hearings at O'Fallon, I feel that we have a very strong position at Cambridge to not be viewed as the co-employer. I have spoken with the Liberty manager concerning our desire to have them communicate to the employees, confirming that Liberty is the employer. Since we have been handbilled several times, now over the past week, it is important that we get this message to the associates as soon as possible. The first flyers indicated that PPG is their employer which is troubling. The contact at The Staffing Group is Tara McKie, Operations Manager.
>
> Please call me if you would like to discuss further. Steph indicated that he thought PPG was going to issue the letter to the associates. At O'Fallon, Staff Management, our contract labour provider in the states, handled the communications.

32. Liberty and PPG agreed that meetings would take place on June 28, 2007 on PPG's premises and wages would be paid by PPG. At the same time PPG and Liberty were discussing a pay increase for associates. The parties recognized that a pay increase would likely dull the attractiveness of the union and were trying to get approval for the pay increase so that it could be announced to associates at the meeting. Liberty and PPG had been discussing a possible pay increase for a considerable period of time. The pay increase was approved on June 27, but was never implemented.

33. The e-mail exchange between Ms. McKie and Mr. Mulder best gives the flavour of the discussion:

> Mckie to Mulder – June 27, 2007 4:04 p.m.
>
> Any news on the proposed pay rate increase, it would be really great if we could announce this tmo? Even if it may take a day or two longer to be official perhaps we should wait until that point to speak with the plant. Your thoughts.
>
> Mulder to Mckie – June 27, 2007 4:41 p.m.
>
> I think a meeting to discuss the union activity is required no matter what happens with the increase. I'll email Cindy to confirm an increase and maybe we can announce that as well.

Mckie to Mulder – June 27, 2007 4:54 p.m.

I have a speech prepared, currently the lawyer is proofing it. Cindy called me today and she would like a copy, I will send one to you as well.

See you in the morning (can the meeting be scheduled maybe after your production meeting?)

Mulder to Mckie – June 27, 2007 4:54 p.m.

I was hoping to combine either the morning or afternoon breaks with the meeting, we can do the entire plant at once, or half at each break as you prefer. The afternoon meeting can take place as soon as Tracey can get the group together.

I spoke to Cindy and we can announce an increase for some of the categories. Hooray?

Mckie to Mulder – June 27, 2007 5:33 p.m.

I would like to do one group together Tracey mentioned 11:30 would work - does that make sense?

Tracey will cover off the afternoon shift.

Mulder to Mckie – June 27, 2007 5:31 p.m.

Works for me, and gives us time to prepare as well.

34. The meetings did not take place as planned. Liberty was served with the application under s. 96 of the Act, and received legal advice to cancel the meeting. Mulder tried to have Liberty hold the meeting anyway but Ms. McKie refused.

35. Eventually a meeting was held, but it did not take place until the Fall, around the time the Board ordered the representation vote. The meeting was held on paid time at PPG in the lunchroom during working hours. At the meeting Liberty representatives spoke to the associates about what they perceived to be the benefits of being in a non-union environment and who was their employer. Once again this meeting was held at the direction of PPG.

36. The union has two main arguments in the certification application. The first is that PPG is the "true" employer of the associates and therefore its application for certification against PPG should be granted. In the alternative (and in any event), it asserts, that PPG, Liberty and TSE constitute one employer for the purposes of the Act and that they should be certified as such. It is appropriate to consider those arguments in turn.

37. The Board has dealt with the "who is the employer" question on numerous occasions over the years. It is unnecessary to review the cases in any detail. They each are decided on their own facts. The Board's test to determine this question is well established. The most frequently relied on articulation of the test is set out in *York Condominium Corporation*, [1977] OLRB Rep. Oct. 645 where the Board examined the following factors in deciding which entity is the employer:

(1) the party exercising direction and control over the employees;

(2) the party bearing the burden of remuneration;

(3) the party imposing discipline;

(4) the party hiring the employees;

(5) the party with authority to dismiss the employees;

(6) the party who is perceived to be the employer by the employees; and

(7) the existence of an intention to create the relationship of employer and employee.

38. The Supreme Court of Canada in *Pointe-Claire* [1997] 1 S.C.R. 1015 identified similar criteria in its decision concerning the *Quebec Labour Code* which has slightly different criteria for establishing the identity of the employer. The Court stated:

> According to this more comprehensive approach, the legal subordination and integration into the business criteria should not be used as exclusive criteria for identifying the real employer. In my view, in a context of collective relations governed by the *Labour Code*, it is essential that temporary employees be able to bargain with the party that exercises the greatest control over all aspects of their work--and not only over the supervision of their day-to-day work. Moreover, when there is a certain splitting of the employer's identity in the context of a tripartite relationship, the more comprehensive and more flexible approach has the advantage of allowing for a consideration of which party has the most control over all aspects of the work on the specific facts of each case. Without drawing up an exhaustive list of factors pertaining to the employer-employee relationship, I shall mention the following examples: the selection process, hiring, training, discipline, evaluation, supervision, assignment of duties, remuneration and integration into the business.

Hiring

39. Liberty has sole responsibility for hiring almost all of the PPG associates. As noted, Liberty has a database of individuals whom it may send to a client including PPG. Those individuals would have attended at a Liberty office, filled out an application form and viewed a safety video and other safety information as well as various Liberty policies (WHMIS, harassment etc). They also do a face to face interview at Liberty. In addition, individuals may be shown and sign employment policies from some of Liberty's major clients so that they are ready to work when called without the need for further orientation.

40. At the end of the "meeting" the individual will fill out an employment contract with a number of features. The employment contract was drafted by Liberty but was reviewed and "approved" by TSE. The features of the contract include:

(i) an acknowledgement that the individual is an "elect to work" employee and is exempted from public holidays (it is not clear whether the employees at PPG get public holidays).

(ii) an acknowledgement that they are casual employees with no guarantee of the length of assignment to a client. Ms McKie in her evidence referred to this as registering.

41. In my view, this process is more akin to a registration, a word used with some frequency by Ms. McKie, than a hiring. In fact there was a new employment contract introduced by Liberty at one point and according to Ms. McKie, associates were required to come in and "re-register" with Liberty.

42. Employees in the database can be placed on a call list called a "hot list". An individual's place and placement on the list is determined largely by how often the individual calls in seeking a placement. Associates eager to work are placed near the top of the hot list. When a client calls looking for labour, Liberty fills the request through a combination of contacting people on the hot list and calling persons from the database.

43. PPG personnel are never involved in the recruiting process of general labour associates. However, they participate in the hiring of the more highly skilled "tech" and "Q.C." positions. Liberty presents candidates for PPG to interview and select. Once selected, the tech candidate is then hired by Liberty as an associate. That said, "tech" associates are a small percentage of the workforce.

44. Occasionally individuals will come directly to the PPG plant seeking work. They are referred to the Liberty on site representative.

45. The parties discuss and work together to improve Liberty's "fill rate", the percentage of time that it provides the number of employees required by PPG, and to decrease turnover. PPG is concerned about turnover because it decreases productivity and increases training costs. "Turnover", includes employees who do not show up for work for any number of reasons. On average, Liberty makes 70 telephone calls to place one new person at PPG.

46. Based on the foregoing, the factor of hiring primarily points to Liberty as the employer. However, it is somewhat mixed.

The Party Exercising Direction and Control Over the Employees

47. Liberty has two supervisors, one for each shift to supervise the associates. Because of that, and in the absence of an argument that the Liberty supervisors were themselves employees of PPG, this factor primarily points to Liberty as the employer, although again it is mixed.

48. The Liberty on-site representative assigns employees to work stations based on their training. Thereafter, if they are experienced they will perform their tasks, which are not complicated, under the supervision of the Liberty supervisors. If they are not experienced, they may also receive some assistance from other associates. There was some evidence that a technical employee was assigned extra duties by a PPG Manager and received extra compensation for it. PPG management also routinely talks to Liberty with their concerns about associate performance so that they can fix the problems.

49. The following is an example, sent from a PPG manager to Mr. Mulder:

> 7:00 Two out of three scheduled forklift drivers arrive. It is the first day on a forklift for one of them.
>
> 7:15 AM GM Soldering line #1 has no solder person, Line #2 has 1 solder person, Line #3 has two solder people one standing watching the other
>
> 7:20 Ask supervisor (Peter) to get person from line #3 over to Line#1 to solder. Peter says associate on Line #3 does not know how to solder. Auditor insists that he does know and has been soldering on afternoons by himself for several days now. Associate eventually moves to empty spot on Line #1. Auditor makes comments about the lack of a training matrix.
>
> 9:20 AM Three associates come to the solder area. They were due in at 9 AM but are late. They do not know who is the supervisor or what they are supposed to do and stand around waiting for something to happen.
>
> 9:25 radio to Supervisor who is driving fork lift and loading a trailer that some associates have arrived and need assignments. Supervisor sends one solder person home to make room for newly associate and puts the second associate onto Line #1 soldering with associate already there and places the third associate doing repacking in rework area.
>
> 11:00 (Lunch) Auditor informs me that PIC associate is waiting for Quinton to perform the push tester calibrations but Quinton has gone home. Day supervisor (Peter) has also gone home. Try to contact Doug the (afternoon) Supervisor but he does not carry a radio and must be tracked down outside, Doug says he will ask Amit to do calibration after lunch. Auditor says that if he hadn't mentioned it would not have gotten down maybe he should have just made it an audit finding.
>
> 11:30 Ask (Doug) the supervisor why he does not wear a radio? Would be much easier for communication, would not have to waste time trying to find him. Supervisors reply "Whats your problem, you got it in for me?" Supervisor later apologies that he is tired and stressed out and puts on a radio.
>
> 1:30 pm Mike (afternoon shift) GM soldering line #1 is not doing pull testing. Inform Doug (supervisor) Doug reminds Mike not to forget to pull test.
>
> 2:15 pm Mike still not pull testing. Inform supervisor again and Supervisor reminds Mike to pull test again.
>
> 2:30 p.m. Mike still not pull testing only pull tests if someone may be watching.

The e-mail was forwarded to the Liberty on-site representative with the following comment:

> The log below outlines a very unorganized, inefficient, and costly day of overtime. I understand people will be late or absent, but we cannot allow this lack of communication and organization to continue. Supervisors who do not share plans with each other, essential tasks not done because they are not assigned, and repeated discipline problems are not caused by our wage rates. Doug's response and apology to Don are becoming more common and are not acceptable from a supervisor. The

> issues listed below all happened on a Saturday, but the simple lack of supervision did not just occur that day.
>
> Please let me know what can be done to quickly correct this situation.

50. I also heard some evidence that there was some instruction and direction from the PPG managerial personnel including quality audits and the correction of quality control defects. In addition, PPG management may direct the on-site representative to investigate why quality control issues are arising. As noted, PPG told the Liberty supervisors what they were permitted to do *vis a vis* the union. Liberty was aware of this and did not object. Finally, associates may ask PPG management directly to be provided with tools.

51. In my view, it is also relevant to consider the indirect ways in which PPG exercises control over the associates. It has a strict training regime which it requires Liberty to put associates through and its instructions for doing work are detailed and precise. Liberty, as an organization has no idea how to make a window for a car. Liberty initially decides who gets trained on what process. However, these decisions must be approved by PPG because PPG pays for it. Training on work processes is done using PPG provided materials.

52. At one point there were amendments made to PPG training materials. PPG paid Liberty staff to make the amendments. Liberty and PPG had meetings in which they jointly discussed new training materials. PPG and Liberty cooperate in deciding when specialized training should be scheduled.

53. In addition, PPG requires that Liberty require its associates to sign a number of PPG's policies. PPG's evidence was that these policies were required because of its ISO certification requirements. Liberty also provides various reports to PPG, including reports which tell PPG about associate attendance, turnover, WSIB, fill-rate, health and safety policy completion and training of each employee. These reports are required by PPG. PPG also requires them because, at least in part, they are necessary to comply with its ISO obligations.

54. Liberty provides a monthly WSIB claims report to PPG. The report is produced by TSE. If an associate is injured at work at PPG, Liberty (or TSE) may offer the associate modified work, but not at PPG. They offer light duties at one of their other clients which can accommodate whatever restrictions the associate has. Or they may be offered light duties at a Liberty office in which case no client is billed for the work. So Liberty appears to serve as a means by which PPG only has able bodied workers.

55. The health and safety and WSIB reports are delivered to PPG's health and safety manager in the United States. Ms McKie testified that they were always working together as a group to improve ergonomics and reduce injuries. However, WSIB costs are included in the mark up that PPG pays; PPG did not pay for WSIB costs dollar for dollar.

56. PPG pays the wages of the on site representative, her assistant and the Liberty supervisors. PPG must agree to their pay rates.

57. On hiring each associate receives three hours of training, with limited exceptions (forklift training is provided by PPG directly), all of which is conducted by Liberty. The associates are trained

in a combination of PPG and Liberty policies. Some are titled "PPG Canada Inc. Kitchener Satellite Contract Associate Orientation and Training". Some are titled PPG/Liberty and have the trademarks of both organizations at the heading. Other policies are drafted by Liberty with input from PPG. PPG trains forklift operators.

58. There is some tension between Liberty and PPG regarding training. Training costs money (because employees are paid and are not engaged in production) and it is paid for by PPG. However, if associates are cross-trained, Liberty has more flexibility in filling positions in the plant. Because of training costs, PPG decides who among associates are going to be trained.

59. Training of employees is, in effect, a shared responsibility. PPG, as the owner of the equipment and processes, and as the guarantor of the quality of the product, has developed a training program for the employees. However, it is Liberty which actually delivers the training. In addition, the other Liberty associates and the Liberty supervisors provide on the job training to new associates as they commence working following the completion of formal training. Finally, PPG personnel will provide advice and instruction to associates, particularly to correct quality problems.

60. Evaluations (to the extent they occur at all) are done by Liberty, sometimes using information reports that are provided by PPG.

61. Prior to the commencement of the union's organizing campaign, Liberty had a "time off request form" which required that PPG's plant manager John Mulder sign off for a request by an associate of more than 5 days off work. This was sometimes, but not always, done. It was PPG which required that it sign off on these extended absence requests.

62. PPG requires that all of its labour suppliers, including Liberty, which have associates working at PPG sites sign an "Associate PPG Orientation Agreement". The document confirms the date on which associates indicate that they have read and understood a variety of policies which PPG requires of associates working at its sites: safety video, attendance standards, corrective action process, PPG General Safety Rules Procedures, Wellness, and Harassment Policy. While these policies are provided by Liberty to associates they are most likely approved by PPG in advance.

63. The "PPG/Liberty" attendance standards policy procedure which is required of Liberty by PPG is of particular interest. The policy, which was discussed by PPG's management team, advises that regular attendance is "essential", that poor attendance reduces the efficiency of operations, that the Liberty on-site representative manages attendance closely and a failure to achieve good attendance record results in the application of a corrective action process as follows:

> **Corrective Action Process**
>
> The Liberty On-Site Coordinator will use the progressive discipline as corrective action to improve job performance and/or when a Liberty Employee violates the Policies & Procedures. In cooperation with our client, the Liberty On-Site Coordinator will forward the written warning or suspension involving quality or safety to the appropriate PPG representative before being issued. For all terminations, a copy of the written termination document must be forwarded to the PPG Site Manager before being issued. In determining appropriate disciplinary action, the following will be considered:

- The seriousness of the offense.
- The effect on other employees, Liberty and our client company.
- Any special circumstances surrounding the incident.
- The employee's prior work record.
- Disciplinary action used in other similar situations.
- Whether or not the employee was aware that his/her behaviour would be unacceptable.

64. It is unclear whether this policy was ever followed, although it was in effect. As a practical matter Liberty has had so much difficulty filling positions at PPG that Liberty rarely disciplines anyone beyond verbal counselling and written warnings.

65. There is a joint health and safety committee at the PPG site. It includes the Liberty on site representative, a member of PPG management and associates. Health and safety committee meetings are scheduled by PPG. One of the associates is a certified member who had his Part 1 certification training paid for by Liberty and his Part 2 training paid for by PPG. PPG wrote to the WSIB seeking certification for the employee and, following the training, the WSIB advised PPG that the employee has been certified. However, if there is a workplace accident the Form 7 is completed by TSE (as the employer for WSIB purposes) and TSE has all dealings with the WSIB.

66. Associates are given an identification stamp. This is a PPG requirement, paid for by PPG. If the associate loses the stamp Liberty provides a replacement at its cost. The identification stamp is a quality control measure which lets PPG know which associate worked on a product.

67. I conclude that direction and control, is a shared responsibility, but slightly leans towards Liberty as the employer.

The Party Bearing the Burden of Remuneration

68. Employees are paid weekly by TSE at the instruction of Liberty.

69. Because PPG's costs – and Liberty's fee – are based on the wages that employees earn, it is PPG that sets the wage rates, albeit in some consultation with Liberty. It is difficult to assess how much actual influence Liberty has over wage rates. When the plant first opened, Liberty conducted a survey of wage rates in the area and PPG selected wage rates and a wage progression grid based on that survey. Later Liberty attempted on several occasions to have the rates increased because it was having difficulty attracting and retaining associates. Until the organizing campaign, those efforts were generally rebuffed. Sometimes, Liberty requested that individual employees receive increases outside of the normal grid progression. These requests were not always granted. Liberty was, however, permitted to advance employees through the wage grid (which had been set by PPG) at the appropriate times as agreed (i.e. after 3 months and 6 months of employment) without approval by PPG management on each occasion.

70. PPG decides when associates will work overtime and decided that overtime would be paid after 44 hours worked in a week.

71. In addition to direct wages, vacation pay and holiday pay, PPG is responsible for the cost of most other payments and benefits provided to employees. These include a benefits package which

was developed and implemented by PPG. TSE sourced out the benefits program. PPG and Liberty share in the cost of the benefits program.

72. Associates may receive a bonus of 50 cents per hour which is based on four different criteria: health and safety, production rates, quality and attendance. PPG approved the bonus system after discussions with Liberty as a way to reduce turnover. The production rate criteria is established by PPG based on its production norms. The bonus is paid based on information reports created by Liberty supervisors and PPG management. So, for example, the Liberty Supervisor and a PPG manager determine whether production rates have been met by an associate. PPG advises Liberty of health and safety infractions which is how it is determined whether the health and safety criterion has been met. Associates may speak to PPG managers directly to understand why they did not get a bonus.

73. In July 2007 PPG authorized Liberty to have a number of "floater" associates to backfill for absences in the plant. If there were no absences and a floater attended the plant, Liberty and PPG agreed to allow the floater associate to work three hours and Liberty would not bill PPG for the hours.

74. Although Liberty (in its view) has the legal responsibility to pay the employee's wages, it is PPG which pays TSE so that TSE pays the associates. These are circumstances in which the Board has generally found that the client – in this case PPG – bears the burden of remuneration.

75. Moreover, the facts in this case are near the top of the spectrum. Liberty was practically begging PPG to permit it to pay associates more. PPG had to approve even a few months early advancement of an associate along the wage grid for an associate.

76. Liberty wanted to give associates an extra incentive to work Saturday overtime, but PPG was only willing to pay incentive rates as required by the *Employment Standards Act*. Sometime PPG would give associates pizza on overtime Saturdays. Overtime must be approved by Mr. Mulder. Associates sign a agreement with Liberty to work up to 44 hours if required. The agreement also provides for notice of an increase in working hours as follows: Liberty Staffing "through PPG" will attempt to provide associates with 24 hour notice prior to an extension of associates' work hours whenever possible.

77. Liberty did share in some associate expenses (for example, the cost of a first aid course) but these were minor in nature. For example there is an associate recognition program at PPG where small gifts are awarded to associates. Gift certificates ($10) are paid for by Liberty. PPG promotional items (mugs, hats) are paid for by PPG. Liberty spends $200 per year on this program. PPG managers may recommend that associates get rewards.

78. PPG partially reimburses Liberty for any associate purchase of safety boots and safety glasses. The boot cost is shared between Liberty and PPG. Safety glasses are reimbursed 100% by PPG. Employees must use a supplier sourced by PPG. PPG determined the policy regarding how many times an employee can get paid eyewear in a given period.

79. PPG may also pay for an associate's taxi cab fare if they are required to come to work off hours.

80. On balance, this factor favours PPG as the employer. It bears the burden of remuneration.

The Party Imposing Discipline and the Authority to Dismiss

81. On hiring, associates are provided with certain progressive discipline policies and procedures entitled "PPG/Liberty Orientation". It is a four stage process: verbal warning, written warning, suspension, and unassigned or termination. Under the policy the first three steps do not have involvement of PPG. However, the fourth step - unassigned or termination - is supposed to be preceded by a meeting with "Liberty On-Site Coordinator and relevant PPG representatives". It would appear that this is not done in practice.

82. Because of the difficulty that Liberty has in recruiting and retaining associates for PPG, meaningful discipline is a fairly rare event at PPG. However, when discipline is carried out in practice it is done by the Liberty on-site representative or a Liberty supervisor. In other words, the PPG discipline policy is not followed. There are instances where someone from PPG will tell Liberty that an employee should be disciplined. The PPG person fills out an infraction report, detailing the incident, recommending corrective action and completes the section of the report which asks whether "disciplinary action [is] required". These suggestions/directions are not always followed. However, Liberty is told so that it can correct the problem. Liberty will meet with the associate directly; PPG is not involved.

83. It is useful to show examples of this in practice. In one case, Cindy LaRocque from the United States wrote to John Mulder and others about fork lift accidents:

> LaRocque to Mulder – January 14, 2007 7:34 p.m.
>
> There have been numerous and sundry fork truck, accidents reported over the last few weeks/months of a very serious nature. I am alarmed at the seriousness of the incidents and the lack of attention being paid by fork truck drivers to the safety and welfare of the workforce and property. I understand that we are not the employer of these individuals, but, if a driver is involved in a serious accident, PPG does have the right to ask that the driver being suspended from driving the truck permanently for safety reasons. If the contract agency determines that further disciplinary action is required up to and including termination, that is their call.
>
> Please inform your Contract Manager that our PPG policy effective immediately is that if a driver is involved in a serious accident involving the destruction of property or the safety of other employees, he/she will be immediately removed from the truck and suspended permanently from performing that function at the facility. We are at the point where zero tolerance is warranted.
>
> If you have any questions, please contact me.
>
> Mulder to Hopkins [the Liberty on-site representative] – January 16, 2007 9:05 a.m.
>
> Please see below [the e-mail from LaRocque] and call me if you have any questions.
>
> Hopkins to Mulder – January 16, 2008 9:20 a.m.
>
> I am sure one of the incidents being referred to is that of [associate] from Jan. 9th. I am not aware of any other incidents of late from our facility, are you?

> [Associate] was re-assigned "immediately" to the production floor as a production worker and received a written warning for safety violation. Are you satisfied with the action that was taken?
>
> Mulder to Hopkins – January 16, 2007 10:17 a.m.
>
> [Associate] is one of the people mentioned and I am satisfied with the corrective action.

84. Another example,

> Mulder to Hopkins – February 15, 2007 10:04 a.m.
>
> We have been experiencing high levels of internally caused damage to doorline, liftgate, and windshield glass for the past few weeks. I have not received satisfactory explanations of why this is happening and I do not see that the problem is going away. I have asked the quality group to start giving me daily reports on who causes this and why. I do not want to be involved with your disciplinary process, but if I see repetitive offenders I will push to have them removed. My next question will be why do I have be the one forcing this ….
>
> Please work with Nathan and Doug to make go away before I do.

85. The form given to associates when they are disciplined is on TSE letterhead and is entitled "Liberty Staffing/The Staffing Edge Human Resources Misconduct Form".

86. There are occasions when PPG tells Liberty that it no longer wishes to have someone at the facility. In addition, Liberty will sometimes remove an associate. However, in view of the staffing difficulties these are rare.

87. In cross examination Ms. McKie was asked why Liberty gave associate attendance reports to PPG. She said it was so that PPG could make sure that associates are properly disciplined for excessive absenteeism. However, as a practical matter that appears not to have happened.

88. PPG has an overriding interest in health and safety at the facility and this can result in disciplinary issues. This arises out of its status as "employer" under the *OHSA* and its own ISO requirements. PPG has a North American health and safety manager, Ted Huyatt, who is based in the United States, but has considerable influence at the Cambridge plant. Liberty sends him WSIB reports and he attends JHSC meetings. Mr. Huyatt has been involved in a situation where he inquired as to whether Liberty was aware of PPG's harassment policy in circumstances where associates engaged in inappropriate behaviour.

89. The way that PPG and Liberty terminated union sympathizers at the start of the organizing campaign forms the basis of the complaint under s. 96 of the Act, but also bears on the "who is the employer issue" and is evidence for the related employer application. It is appropriate to describe it in detail. I note that the facts in this area are largely not in dispute.

90. On or about May 20, 2007 the union commenced its organizing drive. On or about May 23, 2007 a Liberty associate advised a member of PPG management that a union organizer was speaking to associates. The union argued that there is significance to the fact that the employee told

PPG management about the organizing activity and not anyone from Liberty. This is of some significance: it appears that the Liberty on-site representative was not in the plant that day. However, a Liberty supervisor was on-site. Clearly, the Liberty associate felt comfortable going to the PPG manager on an important issue.

91. In any event, on May 23, 2007 John Mulder wrote an e-mail to Ms. McKie and Ms. Hopkins as follows:

> We believe there were union organizers at the gate today at 3:30 pm, although we do not have evidence. Vince saw them as he was leaving about 4 pm but he was not approached. I also have a report that Devon (dayshift soldering) was asking people their opinion of unions today, probably gathering information on who was for and against in preparation for a drive. I will instruct Doug [a Liberty supervisor] to be at the gate tonight when his shift leaves, and give him information on what he is allowed to do.
>
> Please investigate tomorrow and call me on my cell at 9am to discuss this issue [tel#).

92. In the afternoon of May 24, 2007 Mr. Mulder called Ms. McKie (the on site representative was away that day) and told her that he wanted two Liberty employees, Mr. John Saad and Mr. Devon Young ("Devon" in the email) removed from the plant. It is not disputed that this demand was made because of Mr. Saad's and Mr. Young's union organizing activity. Ms. McKie argued with Mr. Mulder, and attempted to change his mind. Ms McKie then called the on site representative who was at home who in turn spoke with Mr. Mulder to try to get him to change his mind. She told him it was a bad idea. Mr. Mulder would not relent and the two associates were advised not to return to the plant and were placed on Liberty's "hot list" of persons waiting for another work assignment. Prior to Mr. Mulder's call, Ms. McKie was not aware of union organizing at the facility.

93. The union filed this unfair labour practices complaint and also requested interim reinstatement of the two employees. The interim application for reinstatement was settled; PPG directed Liberty to bring the two associates back to PPG. This was done However, the two employees were not provided compensation for the period they were off work.

94. As Liberty has little practical interest in disciplining or dismissing employees (in normal circumstances), this factor primarily points to PPG as the employer. It is the party with the over-riding interest in having well disciplined employees at its workplace and is most active in trying to ensure this is done even if Liberty does not follow up. The factor points to PPG as the employer although it is mixed.

The Party Who is Perceived to be the Employer by the Employees

95. The factor has received little weight by the Board in recent years. However, in my view, based on the evidence, employees probably understand that Liberty is at least their nominal employer. However, I am also satisfied that there is confusion. Associates work full time at PPG, get spoken to on occasion by PPG staff, get supervised by Liberty staff, receive paycheques that say they are employed by TSE, and if they get in a workplace accident are told that their employer is TSE and are directed to modified work by TSE. If the associates clearly knew who their employer was PPG, PPG would not have perceived the need to direct a meeting to tell them otherwise.

Conclusion

96. It is not at all clear whether PPG or Liberty is the "true" employer of the employees. The various employer *indicia* are shared. However, for the reasons stated below, it is not necessary to make a finding on this issue. It was because of situations like this that the Legislature put s. 1(4) into the Act and that is where I turn to next.

97. The Board is concerned that a question which should be relatively straightforward – who is the employer – can, because of the complex relationships which employers enter into, be so difficult to resolve. This is a concern, not because these hearings occupy a considerable amount of Board resources. It is because the Act contains a tool – s. 1(4) – which appears to eliminate the necessity of disentangling the identity of the "true" employer especially on an application for certification. S. 1(4) makes it clear that in certain circumstances there may be two or more entities which employ an employee.

Related Employer

98. Section 1(4) of the Act states:

> **1.** (4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

99. The starting point in any application under s. 1(4) is a determination of whether the conditions for such a declaration have been met. Those conditions are: (i) two or more entities (ii) under common control or direction; and (iii) in associated or related activities or businesses. In this case, there are clearly more than two entities, so the controversy is whether associates are employed in associated or related activities and whether they are under common control and/or direction.

100. There is no claim that Liberty, PPG and/or TSE are under common control or direction or engaged in associated or related business broadly speaking. PPG is an auto glass company; Liberty is a labour supply agency. They do not share directors, shareholders or officers. While Liberty is a "member" of TSE's organization, which allows it to use its proprietary tools, and gives it access to certain human resources expertise, they are not really related in a corporate sense.

101. However, that is not the end of the matter. The Board's jurisprudence is clear that such a direct corporate relationship as common ownership is not necessary for the application of s. 1(4). Two companies can be found to be a single employer because of what they do at a single work location. In *Brantwood Manor Nursing Homes Limited*, [1986] OLRB Rep. Jan. 9, the Board discussed the justification for this conclusion this way:

> 93. The effect of treating two or more legal entities as a single employer for the purposes of the *Labour Relations Act* is that they then jointly exercise the rights and jointly and severally bear the obligations of an employer under that Act and any

> applicable collective agreement with respect to a given bargaining unit of employees and their trade union bargaining agent. Subsection 1(4) requires that there be some connection between the entities before the Board may treat them as one. The required connection is defined in very general terms; there must be "associated or related activities or businesses" carried on by two or more entities "under common control or direction." Obviously, the connection contemplated by these phrases is not limited to relationships of the sort that would be characterized at common law as a "partnership" (a legal characterization which, like "employment", does not depend for its application on the willingness of the parties to the subject relationship to so describe it), since partners are jointly and severally liable at common law for all obligations incurred by any one of them in respect of the partnership business. No special power to do so is needed in order to treat partners as effectively constituting one employer under the *Labour Relations Act* with respect to persons employed in the partnership business. More generally, it is clear that the "common direction and control" on which subsection 1(4) focuses is direction and control over businesses or activities, which may include control over employees but need not require it and should not, therefore, be confused with or limited to the control tests which would be applied in determining which of two respondents was the employer of particular employees at common.
>
> 94. Another conclusion which can be drawn from the language chosen by the Legislature is that it did not intend the discretion to treat respondents as one employer to arise only where the connection between them is a relationship by blood, marriage, degrees or corporate ownership or a combination of these. Definitions with that limited perspective were and are quite common in taxation statutes, including the *Corporations Tax Act* in force in Ontario at the time subsection 1(4) was enacted. The Legislature's avoidance of the language of taxation statutes or any other form of words with well-settled meaning must be treated as deliberate. It is apparent the Legislature thought it either impossible or unwise to define in advance any precise limit to the circumstances in which a discretion of this sort should arise, and preferred that the Board work this out on a case by case basis. This is particularly apparent from the use of the phrase "in the opinion of the Board," which makes it clear that it is from the Board's perspective as an administrative tribunal with expertise in labour relations that the meaning of such phrases as "associated or related activities or businesses" and "common control or direction" is to be assessed.

102. In my view Liberty, PPG and TSE are engaged in associated and related activities at the Cambridge plant. PPG is in the business of producing glass products. Liberty's associates produce glass products. Liberty supervisors and on-site representatives supervise the associates to ensure that the glass products are properly made and made in the appropriate quality and rate. PPG managers also ensure the product is made properly both directly and indirectly.

103. That leaves the question of common control or direction. There is no doubt that PPG and Liberty are not "partners" and that their interests do not always align precisely. Nevertheless, in my view, there is joint decision-making about associates on a practical level. The co-operation which went on in response to the union organizing campaign is evidence of that. There is also consultation about a whole range of issues affecting associates including discipline issues and the hiring of certain kinds of associates. There is co-operation about health and safety; both companies have employer representatives on the Joint Health and Safety Committee.

104. The extent to which PPG and Liberty share premises is also significant. Liberty enjoys free office space on site. It uses PPG's boardroom. Its associates use PPG's lunchroom. Liberty conducts business at PPG.

105. Liberty and PPG would like the Board to find that the associates work in a kind of metaphorical box, separated from PPG's business. While this may have been the goal, reality is different. In real life, particularly in a long standing relationship like this one, PPG managers direct the associates at least occasionally. More importantly PPG's instructions to associates are passed to them through the conduit of Liberty's supervisors.

106. I am also satisfied that there is joint control over the associates. While Liberty supervisors manage their day to day activities, some direction is provided by PPG on a day to day basis. This occurs in two ways. First, PPG managers may speak to associates directly. Secondly, PPG managers may speak to associates indirectly, through the Liberty supervisors or on-site representatives. Until immediately prior to the application PPG had to sign off on an associate vacation request of five days or more. Moreover, at a higher level, PPG controls the associate activities. They are required to follow PPG's training and rules while in production. They also follow a variety of PPG policies some of which overlap with Liberty policies. The PPG policies are enforced by both Liberty and PPG.

107. PPG argues, in effect, the policies required by ISO certification mandates should not count. I disagree. Regardless of how policies were put in place, it is significant that PPG requires Liberty to have associates agree to be subject to a number of policies – including a harassment policy, a corrective action process and attendance standards which effectively dictate many of the employment conditions under which associates must work if they are at PPG. The fact that PPG effectively delegates the enforcement of these policies to Liberty underscores the degree of collaboration at the site.

108. PPG and Liberty also rely on the Board's resistance to making a single employer declaration under s. 1(4) where, as here, the two entities at issue are in a genuine sub-contracting relationship. An instance which demonstrates the Board's case law on this point is *Ainsworth Electric Co. Limited,* [1993] OLRB Rep. Sept. 817 where the Board stated:

> 37. In our opinion, the situation here is essentially that of owner – sub-contractor, not a joint venture; and while there may well be sub-contracting arrangements which can attract the application of section 1(4), we are not persuaded that this is one of them. The situation here is similar to that in cases such as *Charming Hostess Inc.*, [1982] OLRB Rep. April 536, *Ethyl Canada Inc.*, [1982] OLRB Rep. July 998 or *Federated Building Maintenance Company Limited,* [1985] OLRB Rep. November 1584, where the Board refused to collapse a sub-contracting arrangement merely because "work" which might have been done by the employees of a sub-contractor was now being done by an owner. The fact that an owner may choose to have certain work done by its own forces, or to have some or all of it done by a sub-contractor, does not provide the basis for a section 1(4) declaration or an extension of bargaining rights to the employees of such owner (be it a chemical manufacturer as in *Ethyl*, a beer manufacturer as in *Charming Hostess Inc.*, an automobile manufacturer, or, as here, a company running an entertainment complex).

109. However, the jurisprudence also recognizes that merely declaring a relationship to be one of subcontractor/contractor does not create a shield against the application of s. 1(4). There is a good

discussion of this point along with a description of the circumstances where a s. 1(4) might issue against a contractor and subcontractor in *Federated Building Maintenance Company Limited*, [1985] OLRB Rep. Nov. 1585:

> 32. We accept the union's proposition that section 1(4) may be broad enough to cover some subcontracting arrangements – especially those which do not involve "contracting out" but which might more appropriate be described as "contracting in" or "labour only" subcontracting. Where "A' enters into a relationship with "B", whereby "B" comes into "A's" premises to perform functions with respect to "A's" own employees, there will inevitably be something of a "symbiotic relationship" between the two business entities. Their activities will be complementary. They will necessarily be "related" in a general sense, and efficiency will usually require that there be some degree of co-ordination. Moreover, the more closely the purchaser of employee services controls when, where, how, by whom, and at what price the employee services are provided, the more the activities will appear to be under *joint control or direction*. If at the same time, the subcontractor is effectively dominated by the purchaser or it appears that the notion of a subcontract was introduced to provide a separate non-union corporate vehicle which permits the purchaser to have the same work performed in much the same way as before, but beyond the ambit of its collective agreement, the Board may well find that a section 1(4) declaration is warranted.
>
> 33. Section 1(4) permits the institutional rights of a trade union and the contractual rights of its members to attach to a definable commercial activity regardless of the particular legal vehicles through which that activity is carried on. Legal form or changes in form will not necessarily dictate, fragment, or undermine a collective bargaining structure. Two firms – quite separate in law – can be treated as one employer for collective bargaining purposes, and the union need not persue the often difficult question of who would be "the real employer" applying common law tests. Moreover, if a particular commercial relationship falls within the ambit of the language of section 1(4) and the facts establish the mischief which section 1(4) was designed to avoid, it does not avail respondents to claim that they are separate companies with merely a "subcontracting" relationship. There is no magic in terminology. On the other hand, while many subcontracting arrangements might arguably fall within a literal reading of the language of section 1(4), we do not think the statute was ever intended to collapse the vast majority of *bona fide* subcontracting relationships. Section 1(4) is clearly discretionary, and should be applied only where there is clear evidence of the mischief it was intended to avoid.

110. The kind of subcontracting circumstances which the Board in the *Federated* case said might lead to a s. 1(4) declaration are largely present here. That is, PPG contracts in the Liberty associates and pays for the supervisors and on-site representatives and there is clearly a symbiotic relationship between Liberty and PPG. Of course what is missing is that Liberty is not dominated by PPG (except, on the evidence, perhaps at the facility) and the arrangement between Liberty and PPG is not designed to avoid a UFCW collective agreement.

111. Apart from that, the circumstances before the Board are quite similar to those in *Kennedy Lodge Inc.*, [1984] OLRB Rep. July 931. In that case the Board determined, among other things, a s. 1(4) application where a nursing home laid off its unionized workforce and contracted with a health care sector personnel supply agency to provide its entire workforce, including a single on-site

supervisor. A majority of the Board found that *Kennedy Lodge* was the "true" employer and that it and the labour supply company (Medox) were related employers as follows:

> 56. In contrast to the two cases referred to above, the activities with which we are concerned in this case form part of the core activity of Kennedy Lodge. It is one thing to contract out the performance of peripheral activities (a hospitality suite where brewing is the core activity or the washing and rustproofing of automobiles where the selling of cars is the core activity) over which fundamental control can be easily relinquished, as it was in those cases. It is much more difficult to relinquish fundamental control over the core activities of the business. If we are somehow mistaken in our conclusion that Kennedy Lodge retained fundamental control over the nursing activities carried out by the aides, then, at the very least, the evidence establishes that Kennedy Lodge and Medox share control over these activities, as they are carried on as part of Kennedy Lodge's business. The contract between Kennedy and Medox contemplates that there will be a significant degree of common control and direction, between Kennedy and Medox and the conditions laid down in the regulations to the *Nursing Home Act* leave no doubt that the activity of Medox in supplying nursing aides to Kennedy Lodge and the activity of Kennedy Lodge in providing nursing care for its residents are related activities within the meaning of section 1(4) of the Act and are under common control within the meaning of the same section.

112. Here, the Liberty associates are fully integrated into PPG's business in Cambridge and they are an integral part of that business. While there are Liberty supervisors on site, these are paid for by PPG and PPG sets their wages in consultation with Liberty. Moreover, they are not "temporary" employees in any sense of that word. When two employers are normally independent but are functionally and economically integrated, even at one location, the essential community of interest between them of the employees employed by one or both often may make it appropriate to treat them as a single employer. In my opinion Liberty and PPG (and potentially TSE) operate associated or related businesses and are under common control and direction.

113. Once the Board finds that the three pre-conditions for the making of a single employer declaration are present that is not the end of the matter. The Board still has discretion to make a single employer declaration or not. In this case PPG, Liberty and TSE argue that even if all of the pre-conditions are met there is no labour relations purpose to making a declaration. They rely on what the Board has often stated is the purpose behind s. 1(4) of the Act. That purpose is discussed in the oft-cited decision in *Brant Erecting and Hoisting*, [1980] OLRB Rep. July 945:

> Section 1(4) was enacted in 1971 and deals with situations where the economic activity giving rise to employment or collective bargaining relationships regulated by the Act, is carried out by, or through more than one legal entity. Where such legal entities carry on related business activities under common control or direction, the Board is empowered to pierce the corporate veil. Section 1(4) ensures that the institutional rights of a trade union, and the contractual rights of its members, will attach to a definable commercial activity, rather than the legal vehicle(s) through which that activity is carried on. Legal form is not permitted to dictate or fragment a collective bargaining structure; nor will alterations in legal form undermine established bargaining rights. In this respect the purpose of section 1(4) is similar to that of section 55 which preserves the established bargaining rights and collective agreement when a "business" is transferred from one employer to another. Section 55 has been part of the scheme of the Act since the mid 1960's. Neither remedial

> provision requires a finding of anti-union animus; their primary application is to *bona fide* business transactions which incidentally undermine or frustrate established statutory rights. Since the two sections are complementary, it is not unusual, as in the present case, for an application to rely on both.

PPG, Liberty and TSE also rely on the Board's decision in *Carpenters and Allied Workers Local 27 v. Toronto (City) and Toronto Parking Authority* [2000] O.L.R.D. No. 1687 (June 15, 2000):

> 19. In this case, the Board finds that even if the legal and factual foundation for a section 1(4) declaration was made out, it would not exercise its discretion and declare the TPA and Toronto to be a single employer for the purposes of the Act. The reasons are quite simple; this case does not disclose any of the "mischief" which section 1(4) was intended to remedy. At its most basic, section 1(4) is in place to ensure there will be no erosion of bargaining rights caused by a unionized entity spinning off a new company, moving work or opportunities for growth from the old company, and operating the new company without regard to the collective agreement obligations of the old. The mischief in such an arrangement is obvious and this labour relations "sleight of hand" is remedied by the Board's discretion to make both companies a single employer for the purposes of the Act.

114. Of course the reason there is no avoidance of a collective agreement or bargaining rights in this case is that there is no collective agreement or bargaining rights to avoid. And that is one of the facts which makes this case somewhat unusual. It is not at all clear that the same principles which govern when a union already has bargaining rights apply when a union is applying for the first time for certification with respect to a group of employees. Although these situations have not arisen frequently, it appears that the Board has identified other somewhat different purposes for s. 1(4) as additionally relevant during certification proceedings. In *Industrial Mine Installations Limited,* [1972] OLRB Rep. Dec. 1029 the Board stated:

> Section 1(4) is obviously contemplated to cure the mischief that results from being unable to properly define and tie down the employment relationship. In many situations where companies have a close relationship an employee may be shifted from one company to another so that his employment relationship, at any given period, is difficult to define in term of one employer. So too, the number of employees employed by one of those companies at any given time may be impossible to ascertain.
>
> Prior to the enactment of Section 1(4), where such situations existed, it was difficult to define the employment relationship and to determine the proper employer for certain purposes under the Act. For example, in certification proceedings it was necessary to determine the proper employer in order to determine whether the union had sufficient membership among the employees to be certified.

115. In addition, there seems to be good reason to make a single employer declaration in recognition of the reality of the workplace. One of these realities is that it is difficult for anyone – employee, union or the Board, to determine who the "true" employer is.

116. Another reality is that if the union is certified for just PPG or just Liberty its bargaining rights are substantially diminished. Bargaining with either one of them alone would be enormously difficult. Power over the employee is shared between PPG and Liberty. Neither has the unfettered

right to raise wages. It only makes sense that they be treated as a single employer rather than splitting them in a way which undermines the bargaining rights at the time the union is certified.

117. Based on the evidence, it is apparent that both Liberty and PPG (at least) need to be certified for the union's bargaining rights to have real meaning. I am satisfied that both companies need to be at the bargaining table and both need to be available to the union to be dealt with on a day-to-day basis. Both companies essentially enjoy supremacy over the employees in particular areas. Certifying only one of them would mean that the union could not deal with the party having supremacy in other areas. These concerns are not merely speculative. If only Liberty were certified as Liberty and PPG desire, one only need to look at their response to the organizing campaign to see that the union would be at a serious labour relations disadvantage in dealing with only Liberty. Moreover, PPG has supremacy in areas – such as wages, health and safety and work procedures which would render the certification of only Liberty very problematic.

118. I am satisfied, therefore, that it is appropriate to exercise my discretion to make a s. 1(4) declaration *vis a vis* PPG and Liberty. The Board finds and declares Liberty and PPG are a single employer for the purposes of the Act with respect to this bargaining unit.

119. The case *vis a* vis TSE was not fully explored by the union. What I know might cause one to conclude that a declaration is warranted. TSE is listed as the employer for various purposes. Associate pay cheques are in the name of TSE. TSE is on the associates' T-4 as the employer and they are the employer for the purpose of workers compensation. TSE offers associates modified work at Liberty. However, TSE is the employer in name only and apparently for payroll and cost management purposes; it is not in any sense a real employer. Given how little the union pursued this case against TSE, it would be unfair to make a declaration against it. The application against TSE is, accordingly, dismissed.

120. The Board finds that the following constitutes a unit of employees of the responding party appropriate for collective bargaining:

> all employees of PPG Canada Inc. and/or Liberty Staffing Services Inc. employed at 560 Conestoga Boulevard in the City of Cambridge, save and except supervisors, and persons above the rank of supervisors, office, sales and clerical staff.

121. On the taking of the representation vote directed by the Board, more than fifty per cent of the ballots cast by employees in the bargaining unit were cast in favour of the applicant.

122. A certificate will issue to the applicant.

123. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before then.

124. There is no dispute that two associates, Devon Young and John Saad, were removed from the PPG plant because they were exercising rights under the Act. The fact that PPG eventually reinstated the employees and disciplined Mr. Mulder for his inappropriate conduct does not diminish

the egregiousness of its initial conduct. While Liberty resisted PPG's demands it became a participant in the improper conduct.

125. Mr. Saad and Young were reinstated to their employment. However, they were not compensated for wages lost.

126. The Board:

(a) declares that PPG and Liberty have violated s. 70 and 72 of the Act.

(b) orders PPG and Liberty to compensate Mr. Young and Mr. Saad for all lost wages and benefits (if any). The Board remains seized if there are any difficulty calculating damages.

127. Liberty is directed to post copies of this decision immediately, where they will come to the attention of associates. These copies must remain posted for at least thirty days.

0701-08-R Canadian Construction Workers' Union, Applicant v. **Priest Rebar Placement Inc.**, Responding Party v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721, Intervenor No. 1 v. Universal Workers Union, Labourers' International Union of North America, Local 183, Intervenor No. 2 v. Formwork Council of Ontario, Intervenor No. 3 v. Labourers' International Union of North America, Ontario Provincial District Council, Intervenor No. 4

Certification – Practice and Procedure – Reconsideration – When Canada Post's Priority Courier left a notice for the employer that there was a package for pick-up at the local post office, the application for certification had not been properly delivered – There was no obligation on the employer to retrieve the package, and when the package was returned to the applicant, it should have become obvious to the applicant that the employer had never received the application –Receipt of a Confirmation of Filing from the Board does not cure the applicant's failure to successfully deliver the application to the responding party – Application dismissed

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Eric Comartin, Tony Dionisio* and *Victor Ferreira* for the applicant; *Robert Gibson* and *Kenneth Wright* for the responding party; *Jerry Raso, Mike Dix* and *Luiz Barros* for Intervenor No. 1; *Benjamin A. Barnes* for Intervenor No. 2; *Alan M. Minsky* and *Horatio Leal* for Intervenor No. 3; *Alan M. Minsky* and *Frank Cassano* for Intervenor No. 4.

DECISION OF THE BOARD: March 17, 2009

ORAL RULING

1. The Board, by decision dated March 16, 2009 in this certification application being dealt with under section 128.1 of the *Labour Relations Act, 1995*, S. O. 1995, c. 1 as am. (the "Act") noted the responding party had sought reconsideration of the Board's February 18, 2009 decision and declined to deal with the request through written submissions. Rather, the Board at paragraphs 2 and 4 of its March 16th decision wrote:

> In the request for reconsideration, Priest states that it did not receive the application or the other materials required by the Board's Rules of Procedure. If this is in fact the case, this is a serious issue.
>
> The matter comes on for hearing tomorrow. The Board at that time and in whatever sequence it finds to be appropriate will hear the submissions of the parties as to whether the Board ought now to entertain the submission of Priest that the application was not delivered to it, and if so, whether the application and supporting documents were delivered in accordance with the Act.

2. When the hearing convened before me, the Board received the submissions and evidence from the applicant and responding party, and brief submissions from Local 721 with respect whether the application and the other material required by the Board's Rules were delivered to the responding party. The parties agreed that if the Board found the application had not been delivered, then this application would have to be dismissed.

3. Kenneth Wright, the principal of the responding party, testified that Canada Post Priority Courier had left a notice dated May 30, 2008 advising that it had attempted to deliver an envelope addressed to Priest Rebar but there was no answer. The notice indicated the envelope could be picked up at a postal outlet after five o'clock on that day. The business office of the responding party is also Mr. Wright's residence. Mr. Wright never picked up that package from the post office. Indeed, the applicant at the hearing before me produced the envelope containing the application and other material that had been returned to the applicant by Canada Post in mid June 2008. The applicant explained it had only learned in February, 2009 the envelope containing the application material had been returned as the envelope had been misfiled.

4. Mr. Wright also testified that he contacted Victor Ferreira, a representative of the applicant with whom he had had some previous dealings, after receiving the notice from Canada Post Priority Courier. The applicant had filed its application with the Board on May 29, 2008 by Canada Post Priority Courier. The Registrar sent the responding party a Confirmation of Filing by courier. That document was received by the responding party on June 3rd. Mr. Wright was not certain precisely when he had contacted Mr. Ferreira in relation to his receipt of material from the Registrar. The notice from Canada Post Priority Courier did not give any indication who had sent the envelope to the responding party. The notice only stated the envelope was addressed to Priest Rebar.

5. In any event, whether Mr. Wright contacted Mr. Ferreira after he had received the confirmation of filing of the certification application from the Registrar, or before but after receiving the notice from Canada Post Priority Courier, what is undisputed is that during Mr. Wright's conversation with Mr. Ferreira, Mr. Wright was told by Mr. Ferreira to pick up the package that had been left for him and put it under his bed. Mr. Wright, in cross-examination, conceded in his

subsequent conversation with Mr. Ferreira, he never advised Mr. Ferreira that he had not picked up that package.

6. The applicant chose not to call Mr. Ferreira to testify about his conversations with Mr. Wright. In the result, I am left with the undisputed evidence of Mr. Wright that the envelope containing the application material was not left by Canada Post Priority Courier at the responding party's premises. What was left there was a notice advising the responding party that it could pick up an envelope (without any indication what was in the envelope) at a Canada Post outlet. As the applicant demonstrated, that envelope was returned to the applicant in mid-June although the fact of its return did not come to the attention of the applicant until February.

7. The applicant asserts delivery of the application was effected by Canada Post Priority Courier when the responding party, having become aware the application material had been sent to it, and had received the notice, refused to pick up the envelope from the post office. The applicant argues that Mr. Ferreira told Mr. Wright to go to the post office to get the envelope, and when Mr. Wright never advised him the envelope had not been picked up, assumed it had been delivered. It says Mr. Wright could have got the envelope containing the application material from the Post Office, and his failure to do so, particularly after having been advised the application had been filed with the Board by having received the confirmation of filing, should not prejudice the applicant.

8. The applicant elected to have the Board deal with this application under section 128.1 of the Act. Sections 128.1(2) and 128.1(3) provide:

> (2) The trade union shall give written notice of the election,
>
> (a) to the Board, on the date the trade union files the application; and
>
> (b) to the employer, on the date the trade union delivers a copy of the application to the employer.
>
> (3) Within two days (excluding Saturdays, Sundays and holidays) after receiving notice under subsection (2), the employer shall provide the Board with,
>
> (a) the names of the employees in the bargaining unit proposed in the application, as of the date the application is filed; and
>
> (b) if the employer gives the Board a written description of the bargaining unit that the employer proposes, in accordance with subsection 7 (14), the names of the employees in that proposed bargaining unit, as of the date the application is filed.

An applicant electing to proceed under section 128.1 of the Act is required to give notice of its election to the employer "on the date the trade union delivers a copy of the application to the employer." It is only after the employer receives the notice that its obligation to provide the information under section 128.1(3) arises.

9. A trade union applying for certification is required by section 7(11) of the Act to deliver a copy of the application for certification to the employer. Section 7(11) provides:

> The trade union shall deliver a copy of the application for certification to the employer by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board.

The Board has adopted rules relating to the delivery of applications for certification filed under the construction industry provisions of the Act. Rule 25.3 requires an applicant to deliver the application and other material prescribed in that rule to the responding party "not later than two days after filing the application with the Board."

10. The issue before me is whether delivery of the application was effected by the applicant, and if so, when it was effected. The applicant contends the application was delivered, or at the very least, the responding party was aware of the application in early June, but, at the latest, by the time of the Regional Certification Meeting in early July when the responding party contacted both Mr. Ferreira and the Labour Relations Officer. The applicant argues that the failure of the responding party to advise Mr. Ferreira it had not picked up the application from the post office and not raising any issue about the applicant's alleged failure to deliver the application until the responding party filed a response in January, 2009 ought to cause the Board to exercise its discretion under the Rules to extend the time for delivery.

11. Rule 6.7 establishes when delivery of a document occurs. Rule 6.7 provides:

> The date a document is delivered is the date that document is received by another party or its authorized representative. However, a document delivered after 5:00 p.m. will be deemed to be delivered on the next day and a document delivered by regular mail will be deemed to be delivered on the fifth day after the document was mailed.

While the Board's Rules do not require personal service of a document, Rule 6.7 requires a document be "received" in order for it to be delivered. It is clear that a document left at the premises of a responding party, in its mailbox or other receptacle used by that business for receipt of documents is sufficient to establish that a document was delivered, regardless of when it came to the attention of the party to whom it was addressed. See *Professional Masonry Service*, [2000] OLRB Rep. Jan./Feb. 106; *Norben Interior Design Limited*, [1984] OLRB Rep. June 851; and *Ferano Construction Ltd.*, [1985] OLRB Rep. Jan. 73.

12. It is undisputed on the facts before me that Canada Post Priority Courier did not leave the envelope containing the application material at the responding party's premises. Rather, it left a notice saying an envelope addressed to Priest Rebar was available for pick up at the post office. In *Kool Fab Mechanical Inc.*, [2005] OLRB Rep. Nov./Dec. 1011 the Board discussed this very issue at page 1011-12 when it wrote:

> Although "delivery" does not require personal service on a representative of the company sought to be served and, as a result, delivery can be effected by either leaving the application in the company's mailbox or sliding the package under the door of the company's place of business, this did not occur. Instead, on November 2nd, 2005, the application was left with a representative of another company that is located at a different municipal address. *The affixing of a delivery notice on the door of the responding party's premises does not constitute delivery of the application to the responding party.* [emphasis added]

13. While the applicant suggests it was unaware that the application had not been delivered, it is clear that its representative, Mr. Ferreira was advised by Mr. Wright that Canada Post Priority Courier had not left the application envelope with the responding party, but had only left a notice advising the responding party that it could pick up the envelope at a postal outlet. I agree with the Board's conclusion in Kool Fab Mechanical Inc. when it said: "The affixing of a delivery notice on the door of the responding party's premises does not constitute delivery of the application to the responding party". This is particularly the case in the circumstances before me when the notice left for the responding party did not even indicate the nature of documents being sent or the identity of the sender. There is, in my view, simply no basis for finding the application was delivered to the responding party when Canada Post Priority Courier left the delivery notice at the responding party's premises.

14. Although the responding party should have advised Mr. Ferreira it had not retrieved the application material, it was under no obligation to do so. The obligation on a responding party to act in response to an application for certification arises when the application is delivered to it. As the Board observed in *The Mill Dining Lounge*, unreported, Board File No. 1859-04-R, decision dated November 9, 2004, [2004] CanLII 41716 at paragraph 18:

> It was within the power of Mr. Hay to track UPS's fulfillment of their promise, if there was one, to deliver the documents prior to 10:30 a.m. on August 30th but he chose not to so this. Any issue he has is with UPS and the effect of UPS's failures should not become a reason to examine the conduct of the responding party or even call for the responding party to explain why delivery did not occur. ...There is no evidence that convinces me that responding party was in any way evading delivery of the documents.

In this case, there is no suggestion the responding party was evading delivery of the application material.

15. In the result, the responding party has established the applicant has not delivered the application material to it. While the responding party was aware an application for certification had been made in which it was named as the responding party, having a responding party simply being aware that an application has been filed does not require a responding party to act in relation to the application. Its failure to do so puts it at risk.

16. Nevertheless, where a responding party establishes that an application for certification was not delivered, the Board does not, under the Act, have any discretion to permit the application to proceed. In my view, the failure to comply with sections 7(11) and 128.1(2) of the Act is fatal to the application.

17. In the result, this application must be dismissed.

3299-08-HS; 3367-08-HS Purity Life Health Products, a Division of SunOpta Inc., Applicant v. Price Teeter, Inspector, Responding Party

Health and Safety – The employer sought suspension of an inspector's orders for production of documents following a critical injury at the workplace – The employer argued that the orders relating to equipment, operating procedures, the employer's health and safety policies, training records, etc., were improperly issued and were an attempt by the Ministry of Labour to "set the employer up" for prosecution – The Board found that all the documents were necessary for the inspector to pursue his inspection and the orders were proper and valid – The production will not breach any confidentiality or compromise any of the employer's privacy rights – Suspension denied

BEFORE: *Peter F. Chauvin*, Vice-Chair.

DECISION OF THE BOARD: March 10, 2009

1. Board File No. 3367-08-HS is an application under section 61(7) of the *Occupational Health and Safety Act,* R.S.O. 1990, c. O.1, as amended (the "Act") seeking the suspension of the Orders in Case ID No. 6032531 issued by Inspector Price Teeter in Field Visit Nos. 5788921, 5788922 and 5797116 on February 4 and 5, 2009. The applicant has also filed an appeal of these Orders, which has been assigned Board File No. 3299-08-HS. This decision deals only with the suspension request.

The Facts

2. On February 3, 2009 John Thompson, an employee of Purity Life Health Products ("Purity"), fell from a lifting device while he was working as a Replenisher, re-stocking products on high level shelves. Mr. Thompson sustained critical injuries which were immediately reported to the Ministry of Labour (the "MOL").

3. On February 4 and 5, 2009 MOL Inspector Price Teeter attended at the Purity workplace. A Purity human resources employee showed Inspector Teeter certain documents that she believed he would require. Inspector Teeter was prepared to take copies at the time, but Graham Walsh, a lawyer for Purity, requested that any document the Inspector required be requested through his field visit. The Inspector agreed to do so, with the exception of one Order.

4. Inspector Price Teeter issued eight Orders pursuant to subsection 54(1)(c) of the Act and one Order pursuant to subsection 51(1)(b) of Ontario Regulation 851 ("the Orders"). These Orders require Purity to produce, among other things: the inspection, maintenance and other reports and information regarding the lifting device; information regarding Mr. Thompson and the other four employees who were working with Mr. Thompson when he fell; information regarding Purity's workplace health and safety policies, inspections, procedures and training records; the job description and standard operating procedures for Mr. Thompson's position of Replenisher and for his Shift Supervisor; the work requirements for Mr. Thompson on February 3, 2009; and the workplace fall protection training records.

5. The Inspector also issued one Order under subsection 57(6)(a) requiring Purity to ensure that the lifting device is thoroughly examined and to not use the lifting device until the Order is complied with.

6. On Monday February 9, 2008 Inspector Teeter received a telephone voicemail message from Graham Walsh stating that Purity would not be providing the information required in the Orders because it had appealed the Orders.

7. The copy of the examination reports of the lifting device requested in Order No. 1 was provided to the Inspector on February 4, 2009. Also, the lifting device has been taken out of service. However, the remaining Orders requesting the production of the documents referred to in paragraph 4 above remain outstanding.

Purity's Submissions

8. Purity submits that the above-mentioned Orders were improperly issued by Inspector Teeter because there was no contravention of the Act that would warrant the issuance of the Orders. Purity submits that under section 57 of the Act such a contravention is required before any such Orders may be issued. Purity also submits that the Orders have been issued for the improper purpose of "setting up" Purity for a prosecution under the Act, and that the MOL is engaged in an investigation, not an inspection.

9. Purity submits that at no time were any workers in danger and the Orders do not relate to worker safety. Purity submits that it has complied with the only two Orders that actually pertain to worker safety, as set out in paragraph 7 above, and that the Inspector should speak to the other workers who were present at the time of the accident to obtain any other information that the Inspector may require, rather than ordering the production of the documents. Purity submits that worker safety has never been at issue in this matter and a suspension of the Orders pending appeal will not affect worker safety in any manner whatsoever.

10. Purity submits that a refusal to suspend the Order will require Purity to produce confidential internal documents that have been demanded by the MOL without proper legal authority which would compromise the privacy rights of Purity. Purity submits that it has a very strong case for this appeal and that Purity should not be required to comply with the Orders until after its appeal has been heard. Purity relies on *Ontario Power Generation Inc.* (Board File No. 3900-07-HS, May 2, 2008). Purity submits that there is no urgent need for the Inspector to obtain the documents. Purity submits that in accordance with section 69 of the Act, the MOL has one full year to lay charges and that there is sufficient time to allow the Board make a ruling with respect to the appeal of the Orders. Purity submits that if it is required to comply with the Orders before the Board has considered the appeal, this would negate Purity's right to appeal.

The MOL's Submissions

11. The MOL submits that Inspector Teeter's investigation into the February 3, 2008 incident is ongoing and the information in the outstanding Orders is necessary for the Inspector to carry out his duties and powers to determine the cause of the accident and whether other employees are at risk of harm.

12. The MOL submits that Purity has failed to cooperate and comply with the Act. The MOL submits that Purity misunderstands the difference between section 57 and an order to produce documents under section 54. The MOL submits that contrary to the submissions of Purity, section 57 of the Act does not override section 54. The MOL submits that the Inspector issued orders requiring

Purity to provide information under the authority of subsection 54(l)(c) of the Act, not section 57. The MOL notes that section 54 provides, in part, that:

> 54(1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,
>
> (a) subject to subsection (2), enter in or upon any workplace at any time without warrant or notice;
>
> (b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
>
> (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same...

13. The MOL submits that, contrary to Purity's assertion, an Inspector is not required to find a contravention of the Act or regulation before ordering the production of documents under subsection 54(1)(c). The MOL relies upon *McDonnell Douglas Canada Ltd.* and *Ontario (Ministry of Labour)* (Re) (unreported, July 27, 1990), AP 90-18 Ont. Dir. App. R. Blair.

14. The MOL submits that the Orders that remain outstanding all relate to the production of documents that would normally be produced in the course of a workplace inspection, and that the production of the documents remains necessary for the MOL to complete its inspection in this matter. The MOL submits that Purity is improperly attempting to use section 61 to prevent the Inspector from collecting information and conducting the inspection. The MOL submits that section 61 cannot be used to impede an investigation.

15. The MOL submits that worker safety cannot be assured if the Inspector is prevented from continuing to investigate the cause of the accident. The MOL submits that the Inspector and the workers at Purity would be prejudiced should the Orders be suspended because the Inspector would be unable to determine whether any endangerment to the workers continues to exist and will be unable to protect the health and safety of workers. The MOL denies the allegation that the Orders were issued for any improper purpose and submits that this allegation is abusive, obstructive and is made without any factual basis.

16. The MOL submits that Purity's statement that the documents sought are "confidential" is entirely frivolous and without merit. The MOL submits that Purity's reliance upon the *OPG* case is misguided because the facts of *OPG* are entirely different from the facts in this matter and the documents in this case are not, as in the *OPG* case, documents over which solicitor-client or litigation privilege might be claimed.

17. The MOL submits that Purity's suggestion that denying the suspension would render the appeal moot is not a ground to grant the suspension, because if it were, every suspension request would have to be granted. The MOL submits that Purity is not likely to succeed on the appeal, and that deference ought to be shown to the actions of the Inspector.

Ruling

18. In dealing with a request to suspend an Order, the Board's approach is set out succinctly in *The Regional Municipality of Hamilton-Wentworth*, [1998] OLRB Rep. July/August 709:

> Three factors have generally been considered by the Board when determining whether a suspension of an order is appropriate in the circumstances:
>
> a) whether the suspension of the order (or, alternatively, the failure to suspend the order) would endanger worker safety;
>
> b) *the prejudice to the parties if the order is or is not suspended; and*
>
> c) whether there is a strong *prima facie* case for a successful appeal of the order.

19. The onus lies upon the party that is requesting the suspension order to establish that such an order ought to be issued. Furthermore, in *General Motors of Canada Limited*, [1997] O.O.H.S.A.D. No. 62 the Board stated that some deference must be afforded to decisions made by Inspectors, and that in the absence of some persuasive reason to interfere with the Order pending the hearing of the appeal on the merits, the original Order should not be suspended. This deference is enhanced when workplace safety is in issue, as stated in *R.J. Dungey & Sons Ltd.*, [1999] OLRB Rep. Jan./Feb. 82 at para. 19:

> 19. Furthermore, although the inspector's order is under appeal there is, in my opinion, a rebuttable presumption that an inspector's order is authorized by the Act and is correct. An inspector has the statutory duty to administer and enforce the Act. An inspector's decision and order are part of that statutory administration and enforcement framework and as such should not be suspended prior to a hearing on the merits of the appeal unless an appellant demonstrates compelling grounds for the Board to do so. Adjudicator Robert Herman noted in *General Motors of Canada Ltd., supra,* "... it is appropriate that deference be given to an Inspector's decision on an application for suspension of his or her order. In the absence of some persuasive reason to interfere with that order pending the full application for review, it ought not to be suspended." The burden of persuasiveness becomes greater, in my view, as the risk to the safety of workers increases with the suspension of the order.

20. Both parties have referred to the *OPG* case. The *OPG* case is distinguishable to this case, for several reasons. *OPG* co-operated with the Inspector and provided the Inspector with all of the documents he requested, including a draft copy of the internal investigation report that *OPG* had prepared after the incident. The Inspector was requesting a copy of the final internal investigation report, which could have been subject to solicitor-client or litigation privilege. As stated earlier, the Inspector was given all other documents he requested and with these documents he was able to conduct his investigation of the incident. In view of this, the Board suspended the Order, but subject to the following qualifications:

> 32. I do not find that granting the suspension will prevent the Inspector from conducting his inquiry or issuing further remedial Orders. The Inspector issued six other Orders requesting other documents. OPG has complied with those six Orders and provided the requested documents to the Inspector. Furthermore, on February 13, 2008, OPG gave the Inspector its internal preliminary report. It would appear that the Inspector has received almost everything that he asked for. This is not a case where the employer has refused to provide any documents or information to the Inspector with the result that the Inspector is unable to assess whether the health and safety of the workers is endangered. The Inspector has not alleged that OPG has been obstructive in any way. To the contrary, the agreed facts indicate that OPG has been

co-operative. Accordingly, it appears that the Inspector has sufficient information to determine whether any remedial Orders are required.

21. The facts of this case are very different from the facts of *OPG*. They are essentially the opposite of the *OPG* facts. Mr. Thompson has sustained critical injuries. The Inspector issued eight Orders to produce documents under section 54(1)(c) of the Act. Purity has complied with only one of these production Orders. Purity has not complied with the Inspector's other Orders to produce documents.

22. The documents that Purity is not providing to the Inspector appear to be necessary for the Inspector to continue his inspection and to ensure that the health and safety of the other workers is protected. This is not a case, as in *OPG*, in which the employer has provided all but one of the requested documents, and in which the Inspector is therefore able to conduct his inquiry without that withheld document.

23. The Inspector has requested the documents pursuant to his powers under section 54(1)(c) of the Act. Section 54 does not require that a contravention of the Act first be found. Purity has provided no grounds for its bald allegation that the Inspector is "setting it up" for prosecution and that the Orders have been issued for an improper purpose. Rather, it appears that the Orders have been issued for the proper purpose of the Inspector carrying out his duties under the Act.

24. The Board does not accept Purity's position that given that it has taken the lifting device out of service and given the Inspector some records regarding the lifting device, that the health and safety of the other workers is no longer at risk, and the production of the other documents is not required. This is not an issue for Purity to unilaterally decide. Rather, the Inspector's requests appear to be relevant and reasonable and the Board finds it appropriate to defer to the Inspector's expertise and judgment as to what is required to conduct an appropriate inquiry into this matter. Nor is it reasonable, as Purity suggests, to restrict the Inspector to only interviewing other workers, rather than requesting the production of documents.

25. The production of these documents will not breach any confidentiality or compromise any privacy rights of Purity. The documents requested are routine records created and maintained in the ordinary course of conducting a business. They are subject to production pursuant to section 54(1)(c) of the Act.

DISPOSITION

23. The application for a suspension of the Orders is dismissed. Board File No. 3299-08-HS, being the appeal on the merits of this application, is forwarded to the Registrar.

0449-08-R International Union of Operating Engineers, Local 793, Applicant v. **Star Concrete Pumping Inc.**, Responding Party

Certification – Construction Industry – The issue in this application for certification was whether the work performed by the employer was properly construction industry work – In order to be performing construction industry work, an employer must be first engaged in constructing, altering, decorating, repairing or demolishing structures or works and this activity must be at a construction site – The employer in this case supplies pumping trucks whose sole function on a job site is to pump concrete from a ready-mix delivery truck to the point of installation in forms – The Board determined that the activity of concrete pumping trucks is more closely integrated with the formwork process, which is construction work, than with the delivery of materials, which is not construction work – The Employer is an employer in the construction industry – Certificate issued

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *S.B.D. Wahl, K. Lew, G. Petschke* and *J. Dowdall* for the applicant; *Carl Peterson, Pat Lamanna* and *Don Burns* for the responding party.

DECISION OF THE BOARD: April 28, 2009

1. This is an application for certification brought pursuant to the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") and in particular section 128.1 of the Act. The first and most significant issue is whether the application is properly brought under the construction industry provisions of the Act, as the applicant International Union of Operating Engineers, Local 793 ("the Union") asserts, or whether it is, in fact, outside the definition of the construction industry as the responding party Star Concrete Pumping Inc. ("Star") asserts. There is a secondary issue in the event of either outcome as to the appropriate bargaining unit in which these employees fall.

2. Star provides a concrete pumping service to businesses engaged in construction. It supplies vehicles called pumping trucks whose sole function on a job site is to receive concrete from a ready-mix truck that has delivered the concrete to the site and to pump it through a long hose held up by an articulated arm or boom to the point of installation, be that between forms or to the surface of a slab. The service it provides is the truck itself and a driver or operator who operates the truck, the pumping equipment, and the hose to place the concrete.

3. While it is travelling along the highway, the pump-truck is similar in general appearance to a large flatbed truck, with a very large load of pumping equipment and an articulated boom on the back. The truck travels to a job site along a public highway. It bears no licence plate, as it is classified by the Ministry of Transportation as a piece of road-building equipment and therefore needs no plate. Although there is no legal licensing requirement for the drivers, Star has concluded that its drivers/operators must have a DZ licence with an airbrakes endorsement to operate its vehicles.

4. When the pump-truck arrives at a construction site, the first task is to choose a place where the truck is to be located. The truck is then stabilized with four outriggers, which are extended to an appropriate length. Stabilizers and stabilizer pads are used to create a solid base for the four outrigger arms. On certain job sites, this operation will need to be repeated more than once, depending on the number of places concrete is to be poured. At this point the vehicle will look much like a crane. The operator then sets up a hopper to receive concrete which will be delivered by ready-mix truck drivers. The ready-mix truck driver arrives at the site after the pump truck has been

readied, backs up to the hopper, empties the load of concrete into the hopper, and then leaves the site. The hopper conveys the concrete to one end of the pipe or hose. Concrete is moved along the hose by the pumping equipment on the pumping truck. Power for the pumping equipment is supplied by the truck engine. The pressure generated within the pipe is a maximum of 1255 pounds per square inch, although it is possible that the pumping device will generate much higher pressures than that. The articulated boom moves by means of pneumatic power generated by the pumping equipment on the truck. It extends and angles the arm of the boom so that the end of the boom, and hence the end of the pipe, is directly located at the place where it will first be installing concrete.

5. The boom itself is operated by the driver/operator through a remote control device, using the simple joystick and toggle-switch configuration. This enables the operator to move the end of the hose which will deliver the concrete to the precise location required by the builder or forming contractor. The operator then causes the pump to pump concrete along the pump and out the far end. While the concrete is being installed, the operator will hold one end of the hose to ensure the concrete is placed at the right spot. There is a short length of flexible hose which extends beyond the end of the rigid articulated boom for greater precision. Star has a number of different pieces of equipment, with booms that range in length from 23 to 48 metres.

6. Pump trucks are often used in house basement forming projects. The operator is able to take the hose and, by a combination of manual movement of the extended flexible hose and the remote movement of the boom, ensure that the end of the hose travels down the entire length of the basement wall, and indeed around some if not all corners, to place the concrete between the forms as it is needed. On other projects, such as high-rise residential or ICI buildings, the boom can be extended in an almost vertical configuration, thus pumping the concrete up a vertical distance of over 40 metres. The Union's evidence was that there are some pieces of equipment that can pump concrete up as high as 70 metres of the vertical lift.

7. With respect to house basement forming, it was common ground that when pumping trucks are not used, concrete is sometimes delivered by ready-mix trucks which pull up close to the edge of a house site and pour concrete directly from the truck into the basement forms. The relevant regulation under the *Occupational Health and Safety Act* requires the truck to stop a minimum of 1.5 metres from the edge of excavation. Soil conditions on any project may require a greater distance than 1.5 metres. In contrast, the pump truck can be parked and stabilized some distance from the excavation and the boom and hose moved to a number of locations without moving the vehicle.

8. The driver/operator must have regard to certain safety issues in operating the equipment. Clearly, the articulated boom can be taken to a height greater than that of a ready-mix concrete truck and hence, clearance issues are different in extent, but similar in kind, as between the two vehicles. Similarly, questions of stability and the distance between the vehicle and excavated soil are also different in extent but similar in kind.

9. It was also not in dispute that when concrete that is needed for high-rise forming construction in situations where a pumping truck is not used, the concrete will be delivered by a hoisting crane in some fashion, generally a process by which the crane lifts a bucket of concrete up to the desired height and the concrete is poured from there.

10. The driver/operator of the pumping truck does not need a hoisting or elevating licence of any sort. The articulated boom of the pump-truck is not capable of performing any lifting function

similar to that performed by a crane. That is, it does not lift a load that is suspended from the end of the boom. On the other hand, it is lifting large amounts of concrete through the internal pipe that is held in place by the articulated boom.

11. If the ready-mix concrete company fails to deliver the required amount of concrete as scheduled, the pump-truck stays idle. The driver must, in the words of one witness, "simply sit and read the paper". While the activities of the forming crew are also limited, there may be other kinds of work on which they can be engaged while waiting for a concrete pour. The concrete is supplied by one of the several concrete supply companies, not by Star Concrete.

12. At regular intervals, and certainly at the end of the day, the driver/operator must clean out the hose to ensure that all concrete has been flushed out of it. He will then remove the hose and return it to its storage position on the truck and return the truck to Star's yard.

13. Star filed a copy of a sample invoice which was used on the projects which are the subject of this application for certification. In edited form, it appears as follows:

Size	Description	Per Hour	Per Metre	Travel
28	28 METRE BOOM SIZE	$	$	$
32	32 METRE BOOM SIZE	$	$	$
34	34 METRE BOOM SIZE	$	$	$
36	36 METRE BOOM SIZE	$	$	$
38	38 METRE BOOM SIZE	$	$	$
43	43 METRE BOOM SIZE	$	$	$
130'	130' TELEBELT	$	$	$

...

A. MINIMUM TIME – There will be a four-hour minimum charge on all boom pump rentals at applicable machine rates
B. Hourly charges (time on job) include setup and clean-out of pump
C. All towing charges incurred at job site are paid by customer
D. TRAVEL TIME – One hour each direction at the applicable machine rental rate

...

As the form indicates, the charge to the customer is a combination of time charges for travel, setup and clean-out of the pump, and charges per metre of concrete placed. The charges vary with the length of the boom size.

14. The Union's evidence attempted to emphasize the similarity of the pumping trucks to cranes typically operated by operating engineers. The appearance of the pumping truck certainly bears some similarities to cranes, particularly the use of outriggers and stabilizers and the presence of booms, the length of which can be varied, used to convey material from one point to another. Although it has greater relevance to the second question facing the Board, the Union also introduced evidence of its practice under the Provincial Collective Agreement. There are specific references to "mobile concrete pumps" and persons operating those and similar types of equipment, along with particular wage rates paid to those sorts of operators. The Union's evidence was that there are three employers that operate pump-trucks who make remittances to the employee benefit funds for the

operators of those trucks (among other types of equipment). At the time of the application, the Union was engaged in a process of developing national training standards and of having those standards transformed into a program of apprenticeship under the *Apprenticeship Act* (as distinct from the *Trades Qualification and Apprenticeship Act*). There is no other collective agreement binding on the International Union of Operating Engineers Local 793 that covers operators of mobile pump units. Nor was there introduced in evidence, any collective agreement binding on any other craft union, and specifically the International Brotherhood of Teamsters, that covers this work.

The Analytic Framework

15. The Board's analysis of the line defining work, businesses or activities falling within the construction industry as opposed to otherwise, has, from the beginning, focused on the application of the definitions in the Act. These definitions have not changed significantly since they were added to the Act in 1961. The relevant provisions of the Act are:

> "construction industry" means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site;
>
> "employee" includes an employee engaged in whole or in part in off-site work but who is commonly associated in work or bargaining with on-site employees;
>
> "employer" means a person other than a non-construction employer who operates a business in the construction industry, and for purposes of an application for accreditation means an employer other than a non-construction employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas or sectors or parts thereof.

The definitions include two elements: whether the employer operates a "business in the construction industry" and second, whether it engages in construction activities "at the site". Obviously, to emphasize one over the other (or to the exclusion of the other) will produce a different result from looking at the two together. As the Board said in the first case in which it dealt with this issue, *Cedarhurst Paving Company*, [1964] OLRB Rep. Dec. 442:

> The applicant stresses the word "business" and is inclined to overlook the words "at the site thereof", whereas the opposite is the case in the submission of the respondent.

Since that time, the Board has fairly consistently focused both on whether businesses are engaged in construction activities or projects, and whether those businesses pursue that activity "at the site" of a construction project.

16. The analytic framework of the Board's consideration of where the boundary of the construction industry lies has been relatively consistent since *Cedarhurst Paving*, above, although the emphasis of that analysis has varied with different types of work.

17. *Cedarhurst Paving* dealt with a road-building company which was engaged in a number of activities. Some work fell entirely outside the construction industry because of the context in

which it was performed. The spreading of oil on existing roads was found to be maintenance work, although the same activity in the middle of a road-construction project would have been construction work, because it would have been work "at the site" of a construction project. Within the road-building projects, the parties agreed that those engaged in work on the actual road itself were engaged in construction activities, but disagreed about certain others who were employed as truck drivers. The Board concluded that the relevant test was whether or not the work performed by those drivers was an integral and necessary part of the business of the employer in constructing, altering or repairing roads at the site of the project. However, in contrast to later cases dealing with the delivery of concrete to job sites, the Board in *Cedarhurst* focused more heavily on the nature of the business and the identity of the employer engaged at the road-building site than on the need to find that the work was performed "at the site". The decision states at page 445:

> There remains, then, for consideration and apart from the dump truck operators, drivers of floats, service trucks and gas trucks. The floats transport equipment to the site of road construction jobs and may move equipment from job to job. This constitutes 99% of the duties of float drivers. The gas trucks transport gasoline to the road construction sites for use of vehicles on the site. The service trucks transport workers and smaller equipment such as shovels, lanterns, barricades and grease for use on construction sites. Although the applicant sought to exclude the drivers of service trucks from the application, we are unable to see any essential difference in their services and those of the float and gas truck operators. If any one of these operations can be said to be part of the business of constructing a road at the site thereof, all must be so included. Ought they to be?
>
> Respondent contends that none of these drivers performs his duties at the site except in an incidental fashion. There is in fact no evidence before us as to their duties, if any, once they reach the site. However, as we pointed out above, if the operations or services performed by these drivers are regarded as an integral and necessary part of the business of the respondent in constructing, altering or repairing roads at the site, then in our view the wording of the definition of construction industry in section 1(1) is wide enough to include such employees under the construction industry provisions of the Act.
>
> On the basis of the evidence before us and after due consideration, we have come to the conclusion that the operations of the floats and service and gas trucks, along with the dump trucks, do in fact constitute the "hard core" or essential features of the respondent's road construction business at the site (in so far as trucks form a necessary part thereof) and that the drivers thereof consequently are eligible for inclusion in a bargaining unit in an application for certification under the provisions of section 92 of the Act.

While the float drivers appear to have moved equipment from one road-building site to another, as well as simply to the site, the gas and perhaps the service truck drivers appear to have been engaged in a delivery of gasoline and employees to the site only. However, the Board noted it and heard no evidence about what work was actually done on the site.

18. Since that time, the Board has followed the basic analysis of *Cedarhurst* and has certainly relied on it in some respects. Several cases following *Cedarhurst Paving*, above, relied on it for the simple proposition that "an employer that mainly delivers material to a site of construction is not engaged in the construction industry within the meaning of [section 126(1)] of the Act": *Maitland Ready-Mix Concrete Products Limited*, [1980] OLRB Rep. Dec. 1751 at para. 6; *Ethier Sand and*

Gravel Limited, [1979] OLRB Rep. Oct. 962 at para. 9, and *Canadian Road Asphalts Limited*, [1980] OLRB Rep. Mar. 299 at para. 17. These cases rely on *Cedarhurst* for that proposition although *Cedarhurst* does not say that. In any event, although these later cases contain very little in the way of analysis, the proposition is one that has remained firmly fixed in the Board's jurisprudence. Indeed, as the Union acknowledged in this case, the debate about the delivery of concrete to a job site is over. It is not work in the construction industry.

19. The first detailed analysis of the application of these provisions is found in *Four Seasons Drywall*, [1990] OLRB Rep. May 525. It is worth noting the caution the Board gave with respect to what it was dealing with in that case:

> 39. Notwithstanding counsel's submissions to the contrary, we find that we do not have to decide in any general or all encompassing terms whether "delivery" of materials is or is not construction work. Neither do we have to determine where the "delivery" of materials stops and the "handling and conveying of materials" or the "handling and distribution of all materials whatsoever into job area stock piles" begins. *We do not read the cases referred to by counsel as standing categorically for the proposition that delivery of materials to a construction site is not construction work. Indeed in our view the cases indicate that whether or not "delivery" of materials is construction work is a question which can only be answered having regard to the particular facts and circumstances of the case.* In our view it is neither necessary nor desirable that the Board precisely define what is "delivery" and what is "handling" or "conveying" or "distribution". An all encompassing definition of any of these terms is neither possible nor practical. Each case must turn on its own facts. (emphasis added)

20. The decision recites the facts and the parties' arguments in detail, but provides little of its own analysis. It concludes that "*In all the circumstances*, the work is not covered by the Union's ICI provincial collective agreement and therefore, by definition, is not work in the construction industry" (emphasis added). The work at issue was the delivery of drywall by a building supply company to a site where Four Seasons Drywall was the drywall contractor. The Board considered whether the employees of the building supply company who delivered the drywall were employed by a business in the construction industry. The drywall was trucked to the site, and the employees of the building supply company operated a boom truck to elevate it to the fifth floor of a high-rise building, unloaded it at that point and placed it in stockpiles in various locations on the fifth floor. My reading of the "circumstances" for the context of the Board's decision were as follows:

- The material was delivered, not to the edge of the job site, but to the fifth floor of a building being constructed.
- The drywall was hoisted by boom trucks. The trucks were likely used to transport the drywall to the job site, but the decision is not clear.
- Some of the employees of the supplier were present on the site, simply to unload the material from the boom truck to the job stockpiles on the fifth and other floors of the building.
- The contract with the supplier required delivery of the drywall to the fifth floor and specifically to the stockpiles and legal title (and hence the risk of

damage) did not pass to Four Seasons Drywall until the drywall was on the stockpile.

- The Labourers had non-construction collective agreements with building supply companies that explicitly covered the work about which the grievance was filed.

- The contract was for the supply of material to a specific point. The unloading portion of that contract was not easily severable from the delivery of it.

The only one of these factors on which the Board commented specifically was the collective agreement factor, essentially that the union could not have two different collective agreements covering the same construction work.

21. In *Marel Contractors* [2001] O.L.R.D. No. 4154 (Oct. 18, 2001), the Board was faced with exactly the same facts as in *Four Seasons Drywall*. While acknowledging that *res judicata* did not apply, the Board was not prepared to let the parties "re-litigate the delivery of drywall to the first drop each time a contractor bound to the ICI agreement purchases drywall from a non-union employer" (paragraph 41).

22. In *Farry Excavating and Grading Ltd.*, [1991] OLRB Rep. Apr. 468, the Board's analysis relied more closely on the analysis proposed in *Cedarhurst*. While the decision deals with grievances which depend on the meaning of the recognition clause and its reference to "on site Teamsters", the Board concluded that the collective agreement was co-extensive with the definition of "construction industry" in the Act and that the parties had not, or were not free to, alter that definition. In this case, the Board was dealing with truck drivers who hauled excavated earth and fill away from a construction site. The evidence indicated that the drivers spent very little time on the construction site and the majority of their time driving from the construction site and unloading at other dump or disposal sites. The Board relied on the *Cedarhurst* decision in its emphasis on the nature of the business in which the employer was engaged. It focused on the meaning of the words "engaged in on-site construction" and said as follows:

> 36. In our view, the adjective "on-site" in the phrase "Teamsters engaged on on-site construction" in the designation modifies the word "construction", not the word "Teamster". "Engaged" means the same as "employed", and a Teamster may be employed on on-site construction while away from the site in the same way that he or she may be employed in the construction industry in those circumstances. In other words, "engaged on on-site construction" means "employed in the construction industry" in the sense the Board elaborated in *Cedarhurst*, when it took into account the effect of the words "at the site thereof" in the definition of "construction industry". The need for the "on-site" connection thus identified in *Cedarhurst* may have been expressly noted in the designation simply to make it clear that Teamsters whose employer's only connection with a construction site is a supplier of materials to others would not be covered by the provincial agreement.
>
> ...

> 46. We find that the phrase "on-site Teamsters" in the collective agreement does not mean anything different from the phrase "Teamsters engaged on on-site construction" used in the designation of the Teamsters employee bargaining agency. Having found that the drivers in question here were "Teamsters engaged on on-site construction" when employed to haul material excavated on-site to both on-site and off-site dump sites, we find that the drivers of the respondent when hauling excavated material on and from the Green Creek project fell within the scope of, and were therefore covered by the terms of, the Teamsters provincial agreement.

In addition, the Board clearly recognized the practical consequences of its decision:

> 26. ...In *Steen Contractors Limited*, [1989] OLRB Rep. Nov. 1173, the Board observed that the characteristics of excavation work are a function of the purpose of the excavation. Adapting the like observation in the *Steen* decision at paragraph 12 to the circumstances of this case, we think it would be anomalous to conclude that excavation for the construction of a sewage treatment plant and the actual construction of such a plant fall within different sectors of the construction industry. It would also be anomalous if the hauling of excavated material fell within the ICI sector while the truck was on the site but slipped into some other, unidentified sector when a truck left the site in order to dump a load of excavated material. If the construction of the sewage treatment plant at the Green Creek site falls within the ICI sector, as we are to assume for the purpose of this decision, then the excavation work and the associated hauling of excavated material both on and off site also fall within the ICI sector.

23. Finally, in *Ellis Don*, [2004] OLRB Jan./Feb. 56 (Jan. 19, 2004), the Board returned to the question of drivers who deliver ready-mix concrete to a job site. Even though the drivers in that case did perform some work functions at the site (adding water or additives, or rotating the drum to increase the slump), it concluded at paragraph 34: "These functions are an integral part of the business of the ready-mix supplier engaged in producing material for supply and delivery to a construction site". The Board concluded that the delivery of concrete in this circumstance was no different from the drywall in *Four Seasons Drywall, above*.

Decision

24. The framework of analysis of this issue by the Board has been consistent over the years. The question is whether the business of the Employer is engaged in the business of constructing, altering, decorating, repairing or demolishing structures or works and does so at a specific construction site. The delivery of materials is not an element of that work. The fact that employees who deliver materials will spend some time on the site, and indeed significant amounts of time, does not alter that emphasis. Other work and business, such as the haulage of excavated material, has been found to be an element of the construction work performed on the site, despite the fact that the dump-truck drivers may spend only a small amount of time at the site. The excavation is integral to the act of constructing a building, and indeed, in a negative sort of way, is part of the structure constructed. The question is always one of how integral the activities under scrutiny are to the construction work that goes on at the site.

25. The question of which business or activity the concrete-pumping truck is most closely integrated with is a difficult one. This work sits right at the boundary of the construction industry. Even the work functions are difficult to categorize. When the task at hand is the placing of concrete

in the forms of a house basement, one might argue, as the Employer does, that the pump's function is no more than that of a larger and more efficient chute extension from the ready-mix concrete truck. To the extent that it is dealing with placing concrete to inaccessible below grade levels or to above-grade levels, the pumping truck is doing the work performed by a crane operator (hoisting a concrete bucket) or a construction labourer who transports concrete by means of a pump, wheelbarrow or otherwise. In placing the concrete, it is performing a delivery function (albeit a very precise one) or it is participating in the forming process by placing the concrete.

26. The type of equipment, and its similarity or otherwise to cranes, as well as the skills necessary to operate the equipment, are of no assistance. Mechanical trades frequently discover that the tasks performed on maintenance work are identical to the tasks performed on repair work. It is simply the context of the work being performed that determines whether that work falls within the construction industry provisions of the Act or otherwise.

27. I conclude that the business of operating concrete-pumping trucks, as described in the evidence in this case, is more closely integrated with the formwork process (which is construction) than it is with the delivery process (non-construction). I do so for the following reasons:

- The work of Star's business is all performed at the job site. Travel (which is charged at one hour each way to a job site) is simply paid for getting the equipment to the site. The work that it performs and that is of any value to the builder or formwork contractor is "at the site" exclusively.

- Star provides a service at the site. It does not supply a product such as drywall or ready-mix concrete. It does not simply rent out equipment, but rather supplies equipment and operator to perform a specific task integral to the creation of the structure under construction.

- Star does not deliver concrete. The builder pays a ready-mix company to deliver the concrete to the site and drop it in the hopper of the pumping truck. The pump operator then must do something with the delivered material (i.e. move it) and that work is performed entirely at the site. The pump truck driver is dependent on the ready-mix driver to deliver materials to enable him or her to do the work they are contracted to do.

- The result of the work performed by the concrete-pumping truck is the placing of concrete in the place and (by virtue of the forms) in a configuration where it will cure and harden into a finished concrete structure. It is not the delivery of materials for some third party to make use of.

- The invoice delivered by Star to its customer reflects work performed entirely at the site. Some of the work is charged on a time basis, with a four-hour minimum. Some of the work is measured in cubic metres, but even that is variable, depending on the size of the equipment, that is, the boom size, or length of the boom reflects a greater distance over which the material is transported on the job site, other than simply delivery to a particular point. Obviously the charge also varies with the size and therefore the cost of operating a larger machine.

28. For these reasons, I conclude that the Employer is an employer in the construction industry. It is engaged in the business, the sole function of which is to move concrete about the site and place the concrete in forms where it will cure and harden. Its work is entirely at the site and is concerned exclusively with the construction of buildings. Thus the employees who are the subject of this application come within a bargaining unit to which the construction provisions of the *Labour Relations Act, 1995* apply.

Appropriate Bargaining Unit

29. This is easily decided, once the decision is made that this is work in the construction industry. The Employer argues that a concrete-pumping truck is not similar to equipment described in the standard Operating Engineers' bargaining unit. That bargaining unit is described in terms of employees "engaged in the operation of cranes, shovels, bulldozers or similar equipment …". I do not accept the Employer's argument. A pumping truck has many features which are similar to those of a crane. Outriggers and stabilizers can be deployed to give the vehicle greater stability and to increase the load which it is capable of carrying. The pumping truck is also a device to lift loads over distances or up vertical heights, albeit a piece of equipment dedicated to a single type of material which is carried in an internal pipe, rather than an exterior container of some sort. The articulated boom is similar to the types of booms found on mobile cranes operated by operating engineers. Although the training undertaken by the pumping truck operators is different from that undertaken by crane operators, in that it leads to a different type of certificate of qualification, it is still a training program that fits most easily with the kind of work done by members of this Union.

30. Subsection 158(1) (a) of the Act requires that a bargaining unit include "all employees who would be covered by a provincial collective agreement". The employees would clearly be covered by the Operating Engineers' Provincial Collective Agreement. No other provincial collective agreement was filed in this proceeding that might cover such employees, although that is hardly determinative given the potential for overlapping job classifications among collective agreements. Simply put, since the employees that are the subject of this application will be covered by the existing Provincial Collective Agreement, this factor supports and confirms the analysis above.

Conclusion

31. In a decision dated May 14, 2008 the Board found that the applicant is a trade union within the meaning of subsections 1(1) and 126(1) and is an affiliated bargaining agent of a designated employee bargaining agency. The Board determines that the appropriate bargaining unit description is:

> all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors.

32. On the basis of the information provided in the application, including the information and membership evidence filed by the applicant, the information provided under subsection 128.1(3) of the Act and the conclusions I have come to in this decision, the Board is satisfied that more than fifty-five per cent of the employees in the bargaining unit were members of the applicant on the date the application was filed. The applicant filed membership evidence on behalf of seven persons, all of whose names appear on the list of eleven employees submitted by the Employer. The Employer, in

its response, asserted that the appropriate bargaining unit was an all-employee unit that may include persons other than the bargaining unit that I have found to be appropriate. However, at the very least, it includes seven of the persons on whose behalf the Union filed membership evidence and they constitute more than fifty-five per cent of the largest number of persons who might be found to be within this bargaining unit.

33. The applicant has asked that it be certified pursuant to section 128.1(13)(a), relying solely on the number of persons in the bargaining unit who are its members. The applicant is entitled to do so under section 128.1. There is nothing raised in this file by any party that would cause the Board to consider directing a representation vote.

34. The Board has received no objection from any employee within the time set in the Notice to Employees provided to the responding party for posting.

35. The Board is satisfied that it should certify the applicant.

36. Section 128.1(24) of the Act, which states as follows, provides for the issuance of more than one certificate if the applicant has the requisite support:

> If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126,
>
> ...
>
> (b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13) (a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;
>
> ...

Therefore, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the International Union of Operating Engineers and Local 793 of the International Union of Operating Engineers in respect of all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Star Concrete Pumping Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

37. Further, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant trade union in respect of all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Star Concrete Pumping Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships

of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

38. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 30 days.

39. The applicant is directed to advise within 10 days of what it wishes to do with Board File No. 1966-08-U.

0160-07-R International Union of Operating Engineers, Local 793, Applicant v. **TWD Roads Management Inc.**, Responding Party

Bargaining Unit – Certification – Status – The union applied for certification of a bargaining unit of seasonal road maintenance employees – The employees were hired on various individual fixed-term contracts, some as "call-ins," others with "guaranteed hours" – The union sought to exclude two employees who, in the union's view, did not have a sufficient connection to the workplace on the date of application; the employer challenged the status of six individuals whose contracts ended a few days prior to the date of application – The Board considered the employment history of the workplace and found there was a regular pattern of seasonal employment – The employer had a long-term contract with the Province to provide seasonal services, therefore there was a reasonable expectation of a return to work for the six individuals – The Board held that they were part of the bargaining unit and their ballots should be counted – In light of this finding, the Board did not have to rule on the union's challenges – Vote count ordered

BEFORE: *Patrick Kelly*, Vice-Chair, and Board Members *P. LeMay* and *D. A. Patterson*.

APPEARANCES: *Ben Barnes* and *Dave Ottaway* for the applicant; *D.J. Shields, Elaine Dray, A. Fernandes* and *Eric Lewis* for the responding party.

DECISION OF THE BOARD: March 4, 2009

1. This is an application for certification under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended ("the Act").

2. The responding party ("TWD" or "the company") is in the business of road maintenance, including winter road maintenance, throughout Ontario under various contracts. The remaining issues in dispute concern:

- the status of several individuals who performed work during the 2006-2007 winter season pursuant to the company's contract with the Ministry of Transportation; and
- TWD's section 8.1 objection.

3. The applicant (or "the union") challenged the status of two individuals who did not cast ballots, Michael Barry and Patrick Dore, on the basis that they did not have a sufficient connection to the agreed bargaining unit on the date the application was filed with the Board, April 13, 2007. The applicant contends Mr. Barry and Mr. Dore are not, therefore, employees in the bargaining unit, and are not relevant to the company's section 8.1 objection. The company takes the position that they are employees in the bargaining unit. On the other hand, TWD challenges the status of six individuals who did cast ballots: Larry Crowe, Newly Evans, John McAskill, Charlien Reijm, Rick Saila and George Wilson. Those individuals, the company contends, were no longer employed pursuant to their contracts of employment when the application for certification was filed, and therefore they ought not to be considered employees in the bargaining unit for any purpose. The union contends that, in all the circumstances, these six individuals ought to be considered employees in the bargaining unit.

4. At the outset of the hearing in this matter, the parties agreed to argue the merits of the disputed issues on the basis of an agreed statement of facts as well as a number of documents. No additional oral evidence was tendered by either party.

5. We refer to the facts as necessary in the remainder of this decision. The agreed statement of facts is, however, attached as an appendix to this decision.

The company's status challenges: Crowe, Evans, McAskill, Reijm, Saila and Wilson

6. TWD's position on the six individuals is that they were not employees in the bargaining unit on April 13, 2007, the application filing date, and therefore, having regard to section 10 of the Act, the ballots they cast in the representation vote cannot be counted. Counsel for the company referred to the language of the written contracts of employment that all the disputed individuals entered into with TWD over the course of their employment history. These contracts take the form of offer letters prepared by TWD, the terms and conditions of which were accepted and acknowledged by the signature of the individuals. TWD utilized two forms of contract, one of which, for ease of reference we will refer to as a "call-in contract", and another which will be referred to as a "guaranteed hours contract".

7. The contracts for Mr. Wilson best illustrate these contractual arrangements generally. Mr. Wilson first entered into a contract with TWD on or about November 23, 2005 for the 2005-2006 winter season. It was a call in contract, whereby Mr. Wilson was entitled to be paid $20 per hour for all work performed as required by TWD. The contract spelled out a specific term, from November 23, 2005 until March 31, 2006, and twice referred to the arrangement as a "fixed term employment contract" and once as a "fixed term temporary employment contract". However, it contemplated the possibility of a future extension, and was subject to termination by either party at any time prior to the expiry date without notice or payment in lieu of notice. The contract further stipulated that, upon its expiry or termination, "no further liability will arise to the Company except for what is rightfully due and owing" as compensation for work performed to that point in time. Furthermore, any compensation to which Mr. Wilson might be entitled was in "full and final satisfaction of any other rights and claims, whether under other legislation, common law or

otherwise", that he might have against TWD resulting from the termination or expiry of the contract. Finally, the contract provides that it "contains the whole understanding of the parties and supersedes all oral or written representations and shall not be modified except by agreement in writing signed by both parties, stating the parties' intent to amend this contract".

8. Over the course of the following 2006-2007 winter season, Mr. Wilson entered into a total of three contracts. The first of those took effect on November 6, 2006 and was to end on April 15, 2007. It was substantially the same as the previous call-in contract. Had this been the only contract Mr. Wilson signed for the 2006-2007 winter season, his employment would have extended beyond the certification application filing date, April 13, 2007. However, the parties entered into a subsequent arrangement – a guaranteed hours contract - on February 9, 2007. This contract superseded the call-in contract, but bore a number of similarities to it. It too was described repeatedly as a fixed term employment agreement, with a specified term, in this case, from February 9, 2007 until March 31, 2007. The consequences of expiry were essentially the same, that is, upon expiry the employee was not entitled to notice or payment in lieu of notice. The limited liability of TWD on termination or expiry was described in identical terms, as was the clause which provided that the contract contains the whole understanding of the parties. The major differences, other than a different job title and an expansion of duties, were:

- the hourly rate was lower ($15.50) but there was a provision guaranteeing Mr. Wilson earnings equal to a minimum of 50 hours during each two-week pay period;

- the employee was required to be available for "call in" 24 hours a day, seven days a week, and failure to respond – other than in circumstances where the individual has advised of unavailability due to illness, bereavement or family emergency - could result in the immediate termination of the contract; and

- the contract could be terminated by TWD without notice prior to the stated expiry date for just cause, or, in the absence of just cause, by the provision of one week's notice by either party or by the company paying the equivalent of 25 hours earnings in lieu of notice.

9. The parties entered into the last of three contracts for the 2006-2007 winter season on April 5, 2007 because further winter maintenance work was required as a result of a snowstorm over the Easter weekend. This contract was essentially the same as the call-in contract Mr. Wilson signed on November 6, 2006, except that, in this instance, the term of the contract was from April 5, 2007 until April 9, 2007.

10. Mr. Wilson returned to TWD for part of the 2007-2008 winter season. On February 7, 2008 he entered into another typical call-in contract with the company, containing the identical or similar clauses previously described above. That contract ran from February 7, 2008 until April 15, 2008.

11. Like Mr. Wilson, all the other five individuals challenged by the company worked under one or other of the call-in and guaranteed hours contracts with specified beginning and end dates. All of them worked at least one winter or part of a winter season prior to the 2006-2007 winter season. Ms. Reijm, Mr. Saila and Mr. McAskill did not work any part of the 2007-2008 winter season

following the application for certification, whereas the other three did work that season, again pursuant to the standard written contracts. Ms. Reijm and Mr. Saila are the only examples of individuals who entered into a written agreement with TWD to extend the term of a previously signed contract. In all other cases where the parties contemplated a change in a written contract's end date, they entered into a new contract. And to repeat, all six of the disputed employees' last signed contracts for the 2006-2007 winter season expired before the date on which the application for certification was filed.

12. For the purposes of this application, there was only one example where an employee did winter maintenance work for TWD for a brief period of his total employment with the company, without a written contract in place. That individual was Joe Beverly Silk, an individual whose status is not in dispute. Mr. Silk worked from April 1, 2007 until April 16, 2007, including the day the application was filed, without a contract, following the expiry of his guaranteed hours contract on March 31, 2007. However, for the period from April 16, 2007 until April 30, 2007 he was working under a new guaranteed hours contract.

13. Counsel for the company argued that the terms of the written contracts and the frequency of their use demonstrate the vigilance with which TWD sought to control the employment relationship and, in particular, the end of the employment relationship. In other words, the contracts are proof that when the expiry date was reached, the relationship was over for all intents and purposes.

14. Counsel for the union pointed to the Records of Employment ("the ROE") prepared for the six disputed individuals after the conclusion of each winter season they worked. In every case, the ROE indicated that the reason for its issue was due to either shortage of work or that the terms of the contract were complete. And in every case, under the heading "EXPECTED DATE OF RECALL", the company indicated "UNKNOWN" rather than "NOT RETURNING".

15. Counsel for the union reminded us of the employment history of the individuals in question. They all worked multiple seasons in winter maintenance. That, argued counsel, contributed to an expectation of re-hire, year over year. Moreover, counsel referred to a letter prepared by William R. McRae, a TWD representative, to Mr. Saila at the conclusion of the 2005-2006 winter season in which Mr. McRae commended Mr. Saila for his dedication and professionalism, and stated, "...we hope to hear from you again this fall". Indeed, Mr. Saila worked the following winter season.

16. In summary, counsel for the union argued that the ROEs, the contract language contemplating the possibility of term extension, and the individuals' work history signify that all six disputed individuals had a reasonable expectation of a return to work for TWD in the same or similar capacity as before, winter season after winter season. Thus, counsel argued, the labour relations reality dictates that those individuals ought to be considered employees in the bargaining unit, regardless of the fixed dates of employment in their contracts.

The union's status challenges: Barry and Dore

17. Mr. Barry entered into one standard call-in contract, with a start date of January 3, 2007 until April 15, 2007. He worked a total of 9.5 hours for TWD: 4 hours on January 26, 2007, and 5.5 hours on February 9, 2007.

18. Mr. Dore also entered into one standard call-in contract, commencing December 11, 2006 and ending on April 15, 2007. He was paid for 4 hours training on January 19, 2007 and for 4 more hours of training on February 2, 2007. He worked no hours after those dates.

19. Counsel for TWD argued that, since the application for certification was filed when Mr. Dore and Mr. Barry had a contract with TWD still in place, and remained available under the terms of the contract for call-in work, they were employees in the bargaining unit, and are relevant for purposes of the company's section 8.1 objection.

20. Counsel for the union submitted that neither Mr. Barry nor Mr. Dore had a sufficient connection to the workplace to be included in the bargaining unit because they worked very few hours, and no hours in the two months preceding the application for certification.

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21. In support of their respective positions, counsel for each party referred us to several authorities. They both relied upon: *Executive Marketing Services, Inc.*, [2000] OLRB Rep. Mar./Apr. 197 (March 16, 2000); *Madeira Residential & Counselling Services Glendonwynne House*, [1999] OLRB Rep. Jan./Feb. 66; *Riverine Crownridge Health* 2001 CanLII 12221 (ON L.R.B.) (Aug. 8, 2001); and *Harbour View Child Care Centre* 2003 CanLII 34754 (ON L.R.B) (April 29, 2003). Counsel for TWD also relied upon: *Canada Building Materials Co.* 2002 CanLII 14672 (ON L.R.B.) (Nov. 27, 2002); *Black Photo Corp.*, [1997] OLRB Rep. July/Aug. 559; *Unique Ice Rink Management Ltd. (c.o.b. NCI Sports and Entertainment)*, [2001] OLRB Rep. Mar./Apr. 401 (April 24, 2001), and *National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 127*, [1993] OLRB Rep. June 572. Counsel for the union also referred us to: *Ability Janitorial Services Limited* 2004 Can LII 26714 (ON L.R.B.) (May 6, 2004); *Corporation of the City of Peterborough* 1995 CanLII 7217 (ON P.E.H.T.); *Wakaw Lake Regional Park Authority* 1999 CanLII 12447 (SK Q.B.), *Oliver v. Canada (Attorney General)* 2003 CanLII 98 (F.C.A.); *Beothuk Data Systems Ltd. Seawatch Division v. Dean* 1997 CanLII 6360 (F.C.A.); *McLeod v. 1309912 Ontario Ltd.*, 2006 CanLII 11436 (ON L.A.) ; *The Ontario Gymnastic Federation* 2001 CanLII 8589 (ON C.A.).

22. Subsections 10(1) and (2) of the Act read:

> **10.**(1) The Board shall certify a trade union as the bargaining agent of the employees in a bargaining unit that is determined by the Board to be appropriate for collective bargaining if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.
>
> (2) The Board shall not certify the trade union as bargaining agent and shall dismiss the application for certification if 50 per cent or less of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

23. Subsections 8.1(1) and (2) read:

> **8.1** (1) If the employer disagrees with the trade union's estimate, included in the application for certification, of the number of individuals in the unit, the employer may give the Board a notice that it disagrees with that estimate.

> (2) A notice under subsection (1) must include,
>
> (a) the description of the bargaining unit that the employer proposes or a statement that the employer agrees with the description of the bargaining unit included in the application for certification;
>
> (b) the employer's estimate of the number of individuals in the bargaining unit described in the application for certification; and
>
> (c) if the employer proposes a different bargaining unit from that described in the application for certification, the employer's estimate of the number of individuals in the bargaining unit the employer proposes.

24. The question to be decided in this matter is whether or not the eight challenged voters were in the bargaining unit when the application for certification was filed on April 13, 2007. The answer to that question will:

- establish the number of individuals in the bargaining unit proposed by the applicant for the purpose of determining TWD's section 8.1 objection[1]; and,
- should the section 8.1 objection fail, resolve whose ballots will be counted in the representation vote.

25. We begin with the company's challenges. The six individuals in question were not working on the date of the application, and furthermore, by that date their period of employment in respect of the 2006-2007 winter season had expired pursuant to the terms of their written contracts. Moreover, those contracts limited the employer's liability to the employee signatories upon termination or expiry. That liability is confined to whatever compensation is due and owing the employee on the date of termination or expiry. So, as counsel for TWD observed, it appears from a review of the contract language, that the parties intended all rights and obligations pursuant to their relationship to cease, except with respect to any outstanding compensation payable to the employee. There is no contemplation in the contracts of a residual right of recall, although there is contemplation of renewals and extensions. However, each of the individuals in question has at least some history of prior similar employment with the company, and the ROEs issued in respect of the individuals suggest that a future return is at least possible. Should they be considered employees in the bargaining unit?

26. As far as we are aware, there does not appear to be a Board decision that deals with the status of seasonal employees or employees on fixed term contracts. There are, however, some court and tribunal decisions that have considered these types of employment relationships. Counsel for the union urged us to consider them, while counsel for the company submitted that we ought to exercise

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[1] The union proposed a unit of "all employees of TWD Roads Management Inc. working in and out of the Towns of Hillside and Coldwater, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical, and sales staff." Subsection 8.1(4) of the Act requires the Board to "determine the number of individuals in the unit as described in the application". Once the Board has ascertained that number, subsection 8.1(6) requires it to determine the percentage of the individuals in the bargaining unit who appear to be members of the union on the application filing date having regard to the membership evidence filed by the union. If the percentage is less than 40 per cent, the application must be dismissed (subsection 8.1(7)); but if it is greater than 40 per cent, the ballots may then be counted, and the application will either be dismissed or a certificate will issue to the union depending on the vote count (subsection 8.1(8)).

extreme caution in applying the principles in those cases because they were decided under different legislative schemes and/or for entirely different purposes.

27. A review of the court and tribunal decisions submitted by counsel for the union confirms counsel for the responding party's cautionary warning. *Peterborough* (June 9, 1995) 0505-94, 0515-04 (P.E.H.T.) is a pay equity decision. The issue was whether or not a seasonal employee, Cheryl Clow, was an employee of the Corporation of the City of Peterborough ("the City") within the meaning of subsection 22(1) of the *Pay Equity Act*, R.S.O. 1990, c. P.7 ("the PEA"). Subsection 22(1) is the provision which permits an employee, among others, to file a complaint with the Pay Equity Commission concerning a violation of the PEA or the regulations passed pursuant to the PEA or an order of the Commission. The question for the Pay Equity Hearings Tribunal was whether or not Ms. Clow ought to have the protection of the PEA, and be placed in a position to make a pay equity challenge against the City. The Tribunal concluded in her favour.

28. *Hildebrant v. Wakaw Lake Regional Park Authority et al* 1999 CanLII 12447 (SK Q.B.) was a wrongful dismissal action involving a plaintiff who was repeatedly hired by the defendant employer into seasonal golf groundskeeping positions over eleven consecutive seasons, and then was let go when he failed to win a competition for the very job he had previously worked for so many years. The Court found there was a contract of an indefinite term rather than a series of fixed term contracts.

29. In *Oliver v. Canada (Attorney General)*, [2003] 4 F.C. 47 the issue concerned the eligibility of teachers on fixed-term September-to-June contracts for employment insurance benefits under the *Employment Insurance Act* for the intervening summer break. A majority of the Federal Court of Appeal upheld the decision of an Umpire to deny the teachers benefits.

30. Another Federal Court of Appeal decision, *Beothuk Data Systems Ltd., Seawatch Division v. Dean*, [1998] 1 F.C. 433 dealt with whether or not seasonal river guardians were entitled to file complaints of unjust dismissal under the *Canada Labour Code* ("the Code"). The majority of the Court found reasonable the adjudicator's determination that the annual layoff of the river guardians did not constitute an interruption in their employment relationship, and that they therefore met the qualifying period under the Code. The majority observed that such an interpretation of the qualifying condition was consistent with the Code's overall purpose of providing non-union employees with some protection from unjust dismissal. The majority also noted that, since it is the employer who decides whether or not seasonal employees will be called upon to work and for how long, there would be a potential for abuse arising from any other interpretation of the Code. Employers, the majority reasoned, would be in a position to control application of the Code to particular employees and avoid the Code's provisions simply by arranging annual layoffs as an inevitable consequence of employment.

31. *1309912 Ontario Ltd., operating as Island View Camp* (HRDC File No. YM2707-6895) is a decision of an adjudicator under the *Canada Labour Code*. One of the issues in this unjust dismissal case was whether Richard McLeod was an employee. The employer maintained that the employment contract had simply expired, and that there was no employment relationship when Mr. McLeod made his complaint.

32. Mr. McLeod's relationship with the employer spanned about four years. He maintained and winterized the employer's fishing camp during the winter of 2000-2001. In the spring of 2002 he

became the camp manager pursuant to a written contract that ran from April 1, 2002 until April 1, 2006. That contract was replaced by another in April 2003. It had no end date, but it did contemplate a winter season contract. In very short order, the second contract was replaced with a third, described as a full-time employment contract, with dates of April 1, 2003 until May 31, 2005. Although Mr. McLeod did not sign the fourth contract tendered by the employer for the 2004 season, the adjudicator determined that he accepted its terms, including a fixed term from April until October 1, 2004, and an increased weekly salary. The fourth contract, like the third, conferred upon Mr. McLeod the right to live on the camp site year round.

33. The adjudicator determined that, despite the end date in the fourth contract, the employment was intended to be an ongoing relationship, with an anticipation that the contract would be renewed in the normal course provided there was work and Mr. McLeod's performance was acceptable. The adjudicator was particularly persuaded by the clause in the contract which permitted Mr. McLeod to live at the camp even in the off season.

34. Finally, in *Ceccol v. The Ontario Gymnastic Federation* 2001CanLII 8589 (ON C.A.), a wrongful dismissal case, the plaintiff, Diana Ceccol, had been employed in the second most senior position in the employer's organization pursuant to a series of one-year contracts over the span of nearly sixteen years. The contracts set out start and end dates and stipulated that, upon acceptable performance reviews, they would be renewed on consent of both parties as to terms and conditions. In addition, the contracts contemplated termination at any time during their operation subject to certain conditions which it is not necessary to describe here.

35. There was evidence that, when Ms. Ceccol was interviewed for the position, the employer made representations that the position was in reality full time permanent, which representation put the plaintiff at ease because she was not interested in only a one-year job.

36. On May 9, 1997, the employer gave the plaintiff written notice that the contract would not be renewed after its expiry on June 30, 1997. Ms. Ceccol sued in wrongful dismissal.

37. The Court of Appeal agreed with the trial judge's assessment that Ms. Ceccol's employment was of an indefinite nature because it was less than clear that the contracts were, in fact, fixed term contracts given the inclusion of provisions dealing with early termination, extension and renewal subject to satisfactory performance. The Court agreed that this ambiguity in the contract should be interpreted strictly against the employer's interests because, otherwise, the consequences for the employee in a fixed term contract are prejudicial in terms of statutory minimum employment protections and the common law principle of reasonable notice.

38. In our view, the decisions described in paragraphs 27 through 37 are distinguishable from the case before us, on a number of grounds. First, all of them, except *Oliver v. Canada*, involved the assertion of individual employee rights against an employer. In some of those, there was a threshold question whether or not the individual employee was entitled to assert claims under a particular legislative scheme (*Peterborough* and *Beothuk Data Systems*). The issue in *Oliver v. Canada* involved the assertion of individual rights to government benefits. The case before us does not involve similar considerations. We are dealing with a contest between a trade union and an employer which will determine whether or not the trade union obtains bargaining rights on behalf of employees in this workplace. Nor is there any question in this case about the application of the Act to the parties in this matter.

39. Secondly, the facts in the cases cited by the union dealing with seasonal or fixed term employees are distinguishable from those in the instant matter. For example, the employees in the *Peterborough*, *Beothuk Data Systems*, and *Ceccol* cases had been re-employed for fifteen, ten and sixteen consecutive years respectively. The disputed employees in the case with which we are concerned were employed over a far shorter period. Moreover, in the *Hildebrandt* case, one of the significant factors the Court took into account in finding that the contract of employment was for an indefinite term was the employer's expectation that the plaintiff would render services without compensation during the off-season. Similarly, in the *Island View Camp* decision, the adjudicator was particularly persuaded of the ongoing nature of the employment relationship because of a clause in the employment contract which permitted the employee to live at the camp for which he was responsible during the off-season. There simply are not similar facts in this matter.

40. The interpretation of statutory language must take into account the scheme and purpose of the legislation in which it is located. Indeed, as the Supreme Court of Canada stated at paragraph 33 in *R. v. Sharpe* [2001] 1 S.C.R. 45 that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." The meaning of "employees in the bargaining unit" (subsection 10(1) and (2)) and "individuals in the bargaining unit" (section 8.1), therefore, must be understood within the context of the Act as a whole.

41. Subsection 1(2)[2] of the Act describes circumstances under which an individual ought not to be deemed to no longer be an employee for the purposes of the Act. The mere cessation of work due to a strike or lockout, or the mere dismissal of an employee contrary to a collective agreement does not necessarily affect a person's status as an employee within the statute. Thus the Act recognizes that, in certain limited circumstances, a person may still be an employee even though he is performing no work and/or has had his employment terminated. Similarly, subsection 1(3)[3] makes clear that a person may be employed in certain professional confidential capacities or perform certain functions in an employment relationship, but still not be an employee for the purposes of the Act. The Act is designed, in part, to facilitate collective bargaining[4], an adversarial process that requires statutory choices about who is entitled to participate, and who ought not to take part. It is essentially a question of fairness and balance.

42. Fairness and balance are also at the heart of voter eligibility. This is illustrated at paragraph 9 In the *Black Photo Corp.* decision, *supra*, where the Board quoted the following passage from *Canac Kitchens Limited*, [1978] OLRB Rep. Aug. 723:

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[2] **1.**(2) For the purposes of this Act, no person shall be deemed to have ceased to be an employee by reason only of the person's ceasing to work for the person's employer as the result of a lock-out or strike or by reason only of being dismissed by the person's employer contrary to this Act or to a collective agreement.

[3] **1.** (3) Subject to section 97, for the purposes of this Act, no person shall be deemed to be an employee,

(a)who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; or

(b)who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

[4] One of the purposes of the Act, stated in section 2, is "[t]o facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees."

> In determining the eligibility to vote of a person who is not actually at work (in this case on the date agreed upon by the parties) the Board has regard to the continuance of the employment relationship…As was stated in *Custom Aggregates*, [1978] OLRB Rep. March 215, the Board has taken the view that it would be unfair to allow persons whose prospects for continued employment are so uncertain to participate in the selection or rejection of a bargaining agent…

Or to put it another way, as the Board did at paragraph 28 in *Goulard Lumber* (1971) Ltd., [1994] OLRB Rep. 1334, referred to in *Executive Marketing Services Inc., supra*:

> The Board considers whether the interest of the person participating in the decision being made by way of a vote is significant enough to justify affecting the outcome of the vote for the employees whose entitlement to participate is not in question.

43. In assessing the employment relationship between the remaining six employees and TWD, the Board must consider all the circumstances.

44. In terms of the duration of the employment relationship, measured in number of winter seasons since 2004 when TWD's contract with the Province of Ontario commenced, Wilson and Crowe served four consecutive seasons or parts thereof; McAskill, Saila and Evans worked three in succession; and Reijm only two in a row. At first blush, these figures do not suggest a particularly long-standing relationship. However, TWD's contract with the Province of Ontario covers only eight winter seasons in total. At the time this application was filed, in April 2007, the contract had run for three winter seasons. Wilson, McAskill and Crowe had worked all three. Saila, Reijm and Evans worked the last two of those three seasons. Viewed in that context, the duration of the employment relationship favours the union's position in this matter. There is a clear history of repetitive seasonal employment so far at this stage in the course of TWD's contract.

45. The length of the layoffs is another factor to take into account. In this case, the layoffs of the six individuals vary slightly in length, but generally are about seven months in duration. On its face, that is a long time, and as such, it detracts from the union's argument that there is a reasonable expectation of a return to work. However, the length of the layoff is consistent with the seasonal and repetitive nature of the business and the type of employment.

46. We turn to the terms of the written contracts. Except in one isolated instance (involving an employee whose status was not in dispute), the company was always careful to ensure that the terms and conditions of employment were spelled out in writing for each and every period of employment worked by the individuals employed in winter maintenance, including the periods of extension. The effect was to limit the company's liability from claims by the individual employees upon expiry of the contract or termination of employment, other than claims for amounts owing the employee to that point in time. Moreover, the parties agreed that the written contracts formed the entirety of their understanding. Whether or not, however, the parties intended to create a truly fixed-term contract is not as evident. Even though the contracts repeatedly refer to themselves as "fixed term", nevertheless they contemplate termination prior to expiry, as well as the possibility of "future extension" and renewal for a further term. These are necessary elements of contractual elasticity which, given the unknowns concerning the length of any particular winter, suggests that the duration of *the employment relationship* is not as fixed as the written contracts might otherwise indicate. Having said that, we are of the view that the existence of the contracts and their specific terms tend to favour the company's position - albeit not emphatically - that the employees did not have an

employment relationship with TWD when the application for certification was filed, and therefore were not in the bargaining unit.

47. A further factor to consider in this case is the information given to the employees concerning their layoff. In this matter, the only evidence about that was in the form of the ROEs issued by the company. In each case, the reason cited for the interruption in earnings was a shortage of work or completion of the contract. The shortage of work or the completion of the contract was due entirely to the seasonal nature of winter maintenance, which is temporary but cyclical and ongoing. In each ROE, the company indicated that the employee's expected date of recall was unknown rather than that the employee was not returning. In our view, the information about the layoffs provided to the individuals tends to confirm the union's position that the employment relationship was ongoing, that the individuals in question could reasonably have expected to be employed in the following season's winter maintenance work, and thus were employees in the bargaining unit.

48. There was no evidence about industrial customs and practices, which is another relevant factor to take into account in a case like this. All we know of this particular company is that it has a nine-year contract with Province of Ontario for highway maintenance commencing in 2004, including eight winter seasons of snow-plowing, salting and road patrols. It will be obligated to provide these winter maintenance services for several seasons following the application filing date, and, unless it establishes a permanent workforce to carry out those services, it will hire individuals for every one of those winter seasons.

49. Finally, we take into account the job qualifications and duties of the six employees. They, like other employees of TWD, were required to have and maintain at least a valid Ontario Class DZ driver's licence, and to operate light and heavy and maintenance equipment including loaders, plows, spreaders, and tractors. They must also perform routine equipment maintenance as required and fill out timesheets, reports and other operations documents as necessary. In our view, the qualifications and skills required by the six disputed employees is a factor more likely than not to result in their re-hire season after season. This favours the union's position.

50. This is a close call on the agreed facts before us. After giving this matter careful consideration, we find that the union's position ought to prevail. Each of the disputed employees worked at least two consecutive winter seasons in the first three years of TWD's contract with the Province of Ontario including the season that ended just prior to the filing of the application. This establishes a regular pattern of seasonal employment characterized by a conclusion of work at the end of one season and the resumption of work at the beginning of the next. In the *Madeira Residential & Counselling Services* decision cited above the majority of the Board appeared to agree with the trade union's assertion described at paragraph 13 that "[i]n answering whether there is a reasonable expectation of a return to work, the most compelling evidence is the prior employment history; if a continuing relationship in the past can be demonstrated, there should be a presumption that it will continue." We agree with that principle. There is in this case an established prior employment history concerning the six individuals whose skills and qualifications suggest the prospect of further employment with the company. Moreover, the ROEs issued to these employees implied that the employment relationship was not necessarily over at the season's conclusion despite the shortage of work necessitating a layoff. In the absence of evidence to the contrary, that relationship ought to be presumed to continue in the future. We conclude that, as of the date of the application, there was a reasonable expectation of a return to work.

51. Counsel for TWD raised two issues in his final argument that bear consideration here. First, counsel argued that if the Board were to include the six individuals in the bargaining unit, we would effectively be ripping up the employment contracts. We cannot agree that that is the effect. Those contracts spell out the rights and obligations of the contracting parties. Our decision ought not to have any bearing on the extent to which the contracting parties are liable to one another pursuant to, or for any breach of, their agreement. We can see no reason why those contracts are not capable of being fully enforced regardless of whether or not we conclude, from a labour relations perspective, that the individuals have a reasonable expectation of returning to work.

52. Secondly, counsel for TWD pointed out that a result in favour of including the six individuals in the bargaining unit facilitates an opportunity to employers in similar circumstances as these – where the employer can choose who is called in and when - to gerrymander the list of eligible voters. We acknowledge there is such a risk. In applications for certification there will often arise the temptation by both employers and trade unions to engage in strategies and tactics that tilt the balance in their favour and/or against the other. The voters' list is prime territory for that type of engagement. When it suits their purposes, it can be anticipated from time to time that one or other of the parties will ask the Board to include or exclude this or that individual or group of individuals from the bargaining unit. In such circumstances, the Board must carefully scrutiny the evidence and the relevant factors in assessing the employment relationship. Like the majority of the Board in the *Madeira* case, which faced precisely the same dilemma concerning gerrymandering raised by counsel for TWD in this matter, we have decided to err on the side of inclusiveness in deciding who is eligible to vote and is relevant for purposes of the section 8.1 objection.

53. Accordingly, we find that Mr. McAskill, Mr. Wilson, Mr. Saila, Ms. Reijm, Mr. Evans and Mr. Crowe were employees in the bargaining unit. They are relevant to a determination of the company's section 8.1 objection, and subject to a determination of that issue, entitled to have their ballots counted.

54. Having regard to the agreement of the parties dated April 22, 2008:

- Derek Storey, Bill Bannister and Robert Patterson are persons relevant to the determination of the company's 8.1 objection and whose ballots are to be counted;

- Chris Madden, Steve Patterson and Norm Thiffault are relevant to the section 8.1 determination, whereas Herb Moreau is not;

- Cliff Ross's ballot is not to be counted, nor is he relevant to the section 8.1 determination.

55. We further note that, at the outset of the hearing, counsel for the applicant indicated the parties' agreement that Robert Watson was relevant to the determination of the section 8.1 issue, and that his ballot can be counted.

56. Given the agreement of the parties described in the two preceding paragraphs, as well as our conclusion that, for the purposes of the section 8.1 objection, McAskill, Wilson, Saila, Reijm, Evans and Crowe are relevant to that issue, it is unnecessary to determine the status of Barry and Dore. Even if we were to conclude that Barry and Dore were in the bargaining unit as of the date the

application was filed, thus bringing the total number of employees in the unit to twenty-eight, it appears not less than forty per cent of the individuals in the bargaining unit proposed by the applicant were members of the union when the application was filed. Accordingly, having regard to subsection 8.1(8), the ballots cast by the six individuals challenged by TWD, as well as those cast by those *employees whom the parties have agreed were* eligible to vote, may now be counted.

57. This matter is referred to the Manager, Field Services, with respect to the counting of the remaining ballots.

58. A final decision will issue once the result of the representation vote is known.

3511-08-M Yukon Construction Inc., Applicant v. Central Ontario Regional Council of Carpenters and Allied Workers, United Brotherhood of Carpenters and Joiners of America, on behalf of Allied Construction Employees, Local 1030, Responding Party v. Universal Workers Union, Labourers' International Union of North America Local 183, International Union of Operating Engineers, Local 793, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721, Intervenors

Collective Agreement – Construction Industry – Termination – The Carpenters and the employer, applied for the Board's consent, pursuant to s. 58(3), to the early termination of the collective agreement covering the employer's employees in all sectors other than the ICI – The collective agreement pertained to the residential sector of the construction industry in the Greater Toronto Area and accordingly s. 150.2 applied – The Board noted that the provisions of s. 150.2 introduced a degree of stability into labour relations in the residential sector by establishing common expiry dates – However, although collective agreements must expire at the same time, nothing in the provisions, barred the early termination of a collective agreement, particularly where the purpose of the early termination is not to undermine the provision's purposes – The Board also noted that s. 58(3) permits the Board to consent to early termination of a collective agreement before it ceases to operate in accordance with its provisions or this Act – Given that the parties' agreement made it clear that they were not seeking early termination in order to negotiate a new collective agreement, but rather to allow Local 1030 to abandon its bargaining rights, the Board consented to the early termination – Consent granted

BEFORE: *Mark J. Lewis*, Vice-Chair.

DECISION OF THE BOARD: April 7, 2009

1. Board File No. 3511-08-M is a joint application filed by Central Ontario Regional Council of Carpenters and Allied Workers, United Brotherhood of Carpenters and Joiners of America, on behalf of Allied Construction Employees Local 1030 (the "Carpenters" and/or "Local 1030") and Yukon Construction Inc. ("Yukon") under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") for the Board's consent to the early termination of the collective agreement currently in operation between them which covers Yukon's construction employees, in the Province of Ontario, in all sectors of the construction industry other than the ICI sector (the "Collective Agreement").

2. Notices of this application have been posted in conspicuous locations where they would most likely come to the attention of all employees who may be affected by this application. The notices indicate that any person having an objection to the Board granting consent to the early termination of the Collective Agreement should file such objections with the Board by April 3, 2009. As of that date no objections had been filed by any of Yukon's employees although interventions were filed by Universal Workers Union, LIUNA Local 183 ("Local 183"), International Union of Operating Engineers, Local 793 ("Local 793") and International Association of Bridge Structural and Reinforcing Iron Workers, Local 721 ("Local 721"). None of these three unions oppose the granting of the consent requested.

3. This application was brought under subsection 58(3) of the Act which states:

> **58.** (3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.

However, as this Collective Agreement covers the residential sector of the construction industry in the Greater Toronto Area, the provision of section 150.2 of the Act must also be considered. Subsections 150.2(1), (2), (3) and (4) state:

> **150.2** (1) A collective agreement between an employer or employers' organization and a trade union or council of trade unions that applies with respect to residential work shall be deemed to expire with respect to residential work on April 30, 2007 if,
>
> (a) it is in effect on May 1, 2005, or it comes into effect after May 1, 2005 but before April 30, 2007; and
>
> (b) it is to expire on a date other than April 30, 2007.
>
> (2) A first collective agreement that applies with respect to residential work and comes into effect on or after April 30, 2007 shall be deemed to expire with respect to residential work on the next April 30, calculated triennially from April 30, 2007.
>
> (3) Every collective agreement that is a renewal or replacement of a collective agreement to which subsection (1) or (2) applies, or of a collective agreement to which this subsection applies, shall be deemed to expire with respect to residential work on the next April 30, calculated triennially from April 30, 2010.
>
> (4) The parties to a collective agreement described in subsection (1), (2) or (3) may not agree to continue the operation of that agreement with respect to residential work beyond the relevant expiry date and any renewal provision in a collective agreement that purports to do so shall be deemed to be void.

4. The provisions of section 150.2 were enacted to introduce a degree of stability into labour relations in the residential sector of the construction industry in the GTA. One of the ways in which this is achieved is by establishing common expiry dates for all applicable collective agreements in order to insure that bargaining occurs within fixed timeframes and the possibility of sequential strikes is thereby significantly reduced. As such, this Collective Agreement, like all other similar collective agreements, would normally expire on April 30, 2010, as, even if this was not provided for in the

collective agreement itself (as is the case here), subsection 150.2 (3) deems this to be so. However, the language of section 150.2 of the Act does not explicitly bar the early termination of collective agreements, as it does, for example, in subsection 150.2(4), with respect to the extension of collective agreements beyond April 30 of each triennial bargain period. Further, subsection 58(3) allows for parties to mutually seek the Board's consent to terminate their collective agreement *before it ceases to operate in accordance with its provision or this Act*. [emphasis added] While, in view of the underlying purpose of section 150.2 of the Act, the circumstances in which the Board might grant such consent are likely to be extremely rare, this is in fact one of those rare situations where it is appropriate to grant consent for early termination.

5. As set out in Yukon and Local 1030's joint application, this request was brought further to Minutes of Settlement which they, along with various other parties, have entered into. These Minutes state:

> MEMORANDUM OF AGREEMENT
>
> Between:
>
> UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
>
> ("Local 183")
>
> - and -
>
> LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA
>
> ('LIUNA")
>
> - and -
>
> CENTRAL ONTARIO REGIONAL COUNCIL OF CARPENTERS AND ALLIED WORKERS, UNITED BAROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ALLIED CONSTRUCTION EMPLOYEES, LOCAL 1030
>
> ("CORC")
>
> CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOOD OF CARPENTERS AND JOINERS OF AMERICA
>
> ("Local 27")
>
> - and -
>
> UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
>
> ("The Carpenters Union")
>
> - and -
>
> LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL
>
> ("OPDC")
>
> - and -
>
> YUKON CONSTRUCTION INC.
>
> (Yukon)

WHEREAS, the parties are bound to a peace treaty entered into as a settlement pursuant to subsection 96(7) of the *Labour Relations Act, 1995*, in OLRB File No. 3430-04-U;

AND WHEREAS, the parties wish to enter into a binding and enforceable agreement as an addendum to the peace treaty agreement and which is enforcement [sic] under subsection 96(7) of the Act.

NOW, THEREFORE, the parties agree with each other as follows:

1. The parties agree that Yukon is bound to the Carpenters Provincial Collective Agreement between the Carpenters' Employer bargaining Agency and the Carpenters' District council of Ontario, United Brotherhood of Carpenters and Joiners of America in respect to work in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario (the "Carpenters Provincial Collective Agreement").

2. The CORC on behalf of Allied Construction Employees, Local 1030 and Yukon shall file an Application under subsection 58(3) of the Act in the form attached hereto as Appendix "A" to this Agreement.

3. Upon the issuance of the declaration of the Board requested in the attached application under subsection 58(3) of the Act, CORC on behalf of Local 1030 shall forthwith abandon the non-ICI bargaining rights with respect to Yukon.

4. Yukon agrees that notwithstanding the issuance of any declaration by the Board pursuant to the attached application under subsection 58(3) of the Act and/or abandonment of bargaining rights by CORC on behalf of Local 1030 pursuant to paragraph three hereof it shall pay and continue to be liable for the payment of all wages and remittances which it was required to make in respect to employees which were covered by its non-ICI Collective Agreement with CORC prior to the termination thereof and that CORC shall be entitled to enforce such payments pursuant to a referral of a grievance to arbitration under Section 133 of the Act.

5. The parties agree that this Memorandum of Agreement is enforceable as a settlement pursuant to subsection 96(7) of the *Labour Relations Act*.

IN WITNESS WHEREOF, of parties have executed this Memorandum of Agreement this day of December, 2008.

("Illegible Signature")
UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

LABOURERS INTERNATIONAL UNION OF NORTH AMERICA

Per: _____
Print Name
CENTRAL ONTARIO REGIONAL COUNCIL OF CARPENTERS AND ALLIED WORKERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF ALLIED CONSTRUCTION EMPLOYEES, LOCAL 1030

Per: ("Illegible Signature") _____
Print Name
CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPNTERS AND JOINERS OF AMERICA

Per: ("Illegible Signature") _____
Print Name

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Per: ("Illegible Signature") _____
Print Name

LABOURERS' INTERNATIONAL UNION OF NORTH AMERCA, ONTARIO PROVINCIAL DISTRICT COUNCIL

Per:
("Illegible Signature") _____
Print Name

YUKON CONSTRUCTION INC.

Per: ("Paul Hickey") _____
Print Name

Per: ("Illegible Signature") _____
Print name

Paul Hickey _____

6. Articles 2 and 3 of the Minutes make clear that these parties are not seeking the early termination of this Collective Agreement in order to negotiate a new one. Rather, the Board's consent for early termination is only being sought in order to allow Local 1030 to abandon all of the bargaining rights which it holds pursuant to the Collective Agreement. In these circumstances granting such consent does not in any way undermine the scheme of triennial bargaining, within common time frames, established by the Act for the residential sector of the construction industry in the G.T.A. Therefore, and specifically noting Local 1030's agreement as set out in the Minutes of Settlement to abandon its bargaining rights established by the Collective Agreement, the Board hereby grants its consent to the early termination of the Collective Agreement between Local 1030 and Yukon.

COURT PROCEEDINGS

1676-08-U (Court File No. 1730/08) Presteve Foods v. CAW Local 444

Superior Court of Justice (Divisional Court), Valin, Wilson and Ray JJ., April 14, 2009

This is an application by the employer judicial review of a decision of the OLRB delivered on August 27, 2008 and confirmed on September 18, 2008. We conclude that the application should be dismissed. The employer agrees that the standard of review is reasonableness. We conclude that the decision of the OLRB is reasonable. Paragraph 19 of the settlement agreement between the parties

dated May 1, 2008 is not restricted and does not prohibit the Union from meeting with employees on other occasions at other locations. The applicant shall pay costs to the respondent union in the amount of $1,500 within 30 days.

CASE LISTINGS FEBRUARY 2009

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING FEBRUARY 2009

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1913-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bonnechere Excavating Inc. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment and those primarily engaged in the repairing or maintaining of same and employees engaged as surveyors in the employ of Bonnechere Excavating Inc. in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the County of Peterborough, the County of Victoria and the provisional County of Haliburton, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

0960-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Canadian Mining and Development Inc. (Respondent)

Unit: "all construction labourers in the employ of Canadian Mining and Development Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Canadian Mining and Development Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3876-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Goodfellow Construction Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Goodfellow Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Goodfellow Construction Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

0211-08-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Kidd Mechanical Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Kidd Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Kidd Mechanical Inc. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (7 employees in unit)

2207-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dakis Contracting Co. Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Dakis Contracting Co. Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and carpenters and carpenters' apprentices in the employ of Dakis Contracting Co. Ltd. in all sectors of the construction industry in the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton, and Alnwick in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

2708-08-R: Brick and Allied Craft Union of Canada (Applicant) v. 548493 Ontario Limited o/a Peter Fabbro Mason Contractor (Respondent)

Unit: "all bricklayers and bricklayers' apprentices in the employ of 548493 Ontario Limited o/a Peter Fabbro Mason Contractor in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, in all sectors of the construction industry, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

2779-08-R: Universal Workers Union, Labourers International Union of North America Local 183 (Applicant) v. Fernbrook Homes Ltd. (Respondent)

Unit: "all construction labourers and all carpenters and carpenters' apprentices in the employ of Fernbrook Homes Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the County of Simcoe, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (38 employees in unit)

3157-08-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. McLean Taylor Construction Limited (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices, truck drivers and employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of McLean Taylor Construction Limited in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, and in the County of Brant and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Norfolk, save and except non-working forepersons and persons above the rank of non-working foreperson" (21 employees in unit)

3232-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Royalwood Carpentry Ontario Inc. (Respondent)

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of Royalwood Carpentry Ontario Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (85 employees in unit)

3320-08-R: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. M.G. Welding and Fabrication (Respondent)

Unit: "all ironworkers and ironworkers' apprentices in the employ of M.G. Welding and Fabrication in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and ironworkers and ironworkers' apprentices in the employ of M.G. Welding and Fabrication in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax

and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3343-08-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Chislett Asphalt Roofing Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Chislett Asphalt Roofing Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all carpenters and carpenters' apprentices in the employ of Chislett Asphalt Roofing Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman and persons covered by subsisting collective agreements" (10 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3528-06-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Burnhamthorpe Roofing Co. Ltd. (1994) (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all employees (workers) [of Burnhamthorpe Roofing Co. Ltd. (1994)] who perform the work described in the clarity note below as well as the metalmen who perform the work described in the clarity note below excluding non-working foremen, hourly service men, flat roofers, aluminum/vinyl applicators, persons engaged in re-roofing, office, warehouse/shop workers, clerical workers and persons above the rank of foreman, engaged in the application of shingles and other roofing materials in new subdivision work (three or more units) in residential low-rise buildings (defined as non-elevated housing of not more than four (4) stories in height excluding basement) in the Province of Ontario, save and except the industrial, commercial and institutional sector. For additional clarity custom homes are excluded" (19 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	1
Number of ballots segregated and not counted	14

2545-08-R: International Association of Machinists and Aerospace Workers (Applicant) v. Maitland Lewis Enterprises Limited (Respondent)

Unit: "all parts, service desk, shuttle drivers and clerical employees of Maitland Lewis Enterprises Limited, save and except persons covered by existing collective agreements, persons exercising managerial functions as defined by the Labour Relations Act, or persons employed in a confidential capacity in matters relating to labour relations as defined by the Labour Relations Act, employees of the Young Drivers of Canada division, sales staff, and students employed during the school vacation period" (5 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	8

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

2684-08-R: Amalgamated Transit Union, Local 1767 (Applicant) v. Corporation of the City of Sault Ste. Marie (Respondent)

Unit: "all employees of the Corporation of the City of Sault Ste. Marie in the classification of Operator" (70 employees in unit)

Number of names of persons on revised voters' list	72
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	47
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	46
Number of ballots marked in favour of intervener	1
Number of ballots segregated and not counted	0

2711-08-R: Ontario Nurses' Association (Applicant) v. Waterdown Long Term Care Centre Inc. a/o Alexander Place (Respondent)

Unit: "all registered nurses and nurses with temporary Certificate of Registration employed in a nursing capacity by Alexander Place, in the town of Waterdown, save and except the Unit Coordinators, Staff Educators, Co-Director of Care and persons above the rank of Co-Director of Care" (20 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

3226-08-R: Service Employees International Union Local 1 Canada (Applicant) v. Maynard Nursing Home (Respondent)

Unit: "all Registered Nurses employed by Maynard Nursing Home in the City of Toronto, save and except the Director of Care, the Assistant Director of Care, Supervisors, persons above the rank of Supervisor, and persons employed as office and clerical staff" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

3265-08-R: International Association of Machinists and Aerospace Workers (Applicant) v. AmbuTrans Inc. (Respondent)

Unit: "all employees of AmbuTrans Inc., based in the City of Toronto, working in and out of the City of Toronto, save and except dispatchers, mechanics, office and clerical staff, supervisors and persons above the rank of supervisor" (148 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	163
Number of persons who cast ballots	80
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	74
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	51
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	6

Applications for Certification Dismissed Without Vote

3303-08-R: Hopewell Labour Relations Association (Applicant) v. Hopewell Logistics Inc. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

4028-06-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (Applicant) v. Falls Management Company and/or Complex Services Inc. cob as Casino Niagara (Respondent)

Unit: "all stage employees of the responding party in the City of Niagara Falls, save and except managers and persons above that rank" (4 employees in unit)

0339-07-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Giancola Aluminum Contractors Ltd. and/or Giancola Aluminum Contractors Inc. (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all construction Workers of the Contractor engaged in new Residential subdivision Construction (defined as 3 or more units) in residential low-rise buildings (defined as non-elevated housing of not more than 4 storeys in height excluding basement) in the installation of aluminum and vinyl siding, eavestroughing, soffit and fascia, in the Province of Ontario, save and except the industrial, commercial and institutional sector, save and except non-working foremen, persons above the rank of non-working foreman, office and clerical staff" (40 employees in unit)

Number of names of persons on revised voters' list	76
Number of persons who cast ballots	76
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names do not appear on voters' list	32
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked in favour of intervener	11
Number of ballots segregated and not counted	64

0257-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Lormel Homes Ltd. (Respondent)

Unit: "all construction labourers in the employ of Lormel Homes Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

3143-08-R: International Brotherhood of Electrical Workers (Applicant) v. Casino Rama Services Inc. (Respondent)

Unit: "all security officers employed by Casino Rama Services Inc. in the Town of Rama, Ontario save and except security shift managers and persons above the rank of security shift managers, dual rate casino supervisor/managers, corporate investigators, surveillance officers and office and clerical staff" (170 employees in unit)

Number of names of persons on revised voters' list	191
Number of persons who cast ballots	165
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	160
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	45
Number of ballots marked against applicant	115
Number of ballots segregated and not counted	5

3263-08-R: Canadian Union of Public Employees (Applicant) v. CTS Canadian Career College (Respondent)

Unit: "all employees of CTS Canadian Career College employed at the Barrie campus in the city of Barrie, save and except supervisors and persons above the rank of supervisor" (30 employees in unit)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	1

Applications for Certification Withdrawn

0416-07-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. GM Exteriors Inc. (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

2447-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. V.H.L. Developments Inc., Gareene Homes Ltd. and, V.H.L. Developments (Markham Place) Inc. (Respondents)

0277-08-R: The International Union of Painters and Allied Trades, Local Union 1891(Applicant) v. Goodfellow Construction Inc. (Respondent)

0928-08-R: International Union of Operating Engineers, Local 793 (Applicant) v. Garden River Development Corporation (Respondent)

1306-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Array Canada Inc. (Respondent)

1376-08-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ashbridge Electric Contractors Limited and, Polycon Electric Contractors Limited (Respondents)

1457-08-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. T. A. Andre & Sons (Ontario) Limited (Respondent)

1459-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Beneff Concrete Ltd. (Respondent)

1553-08-R; 1554-08-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Paul Brown & Son Excavating Ltd. (Respondent)

2550-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 510974 Ontario Limited o/a Continental Insulation (Respondent) v. International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Intervener)

3091-08-R: Teamsters Local Union 847, AFL-CIO-CLC (Applicant) v. Stericycle Inc. (Respondent)

3187-08-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Complex Services Inc. (Respondent)

3201-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, (Applicant) v. Streetcar Developments Inc. (Respondent)

3236-08-R: Canadian Union of Public Employees (Applicant) v. Peterborough, Victoria, Northumberland and Clarington Catholic District School Board (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

0310-02-R: Brick and Allied Craft Union of Canada (Applicant) v. Ontario Power Generation Inc. and, Brighton Beach Power Ltd. (Respondents) v. ATCO Power Canada Ltd. (Intervener) *(Dismissed)*

0312-02-R: Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. and, Brighton Beach Power Ltd. (Respondents) v. I.B.E.W. Construction Council of Ontario, International Brotherhood of Electrical Workers, Local 773, ATCO Power Canada Ltd. (Interveners) *(Dismissed)*

0727-03-R: Iron Workers District Council of Ontario (Applicant) v. Zimmcor Group Inc., Zimmcor Company, 1071863 Ontario Ltd. c.o.b. as Zimmcor Toronto, Zimmcor (1993) Inc. (Respondents) v. The Ontario Council of the International Union of Painters and Allied Trades, International Union of Painters and Allied Trades, Local 1819-Glaziers, Architectural Glass and Metal Contractors Association (Interveners) *(Dismissed)*

3089-06-R: Bakery Confectionery Tobacco Workers and Grain Millers International Union, Local 242 (Applicant) v. Beta Brands Limited,, Beta Brands U.S.A. Ltd,, Sun Capital Partners Inc. and Sun Beta LLC, Beta Brands (Barbados) Holding SLR (Respondents) *(Withdrawn)*

0601-07-R: United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Loblaws Supermarkets Limited, Loblaw Companies Limited, National Grocers Co. Ltd., Joe Mimran and Joe Mimran and Associates Inc. (Respondents) *(Terminated)*

1409-07-R: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 18 (Applicant) v. City of Hamilton and, Police Services Board (Hamilton) (Respondents) *(Dismissed)*

3293-07-R: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Spadas Decorating & Painting Limited and, Boardwalk Painting & Decorating Inc. (Respondents) *(Granted)*

3542-07-R: Power Workers' Union - Canadian Union of Public Employees, Local 1000, C.L.C. (Applicant) v. Halton Hills Hydro Inc., Halton Hills Energy Inc., Halton Hills Energy Services Inc., Halton Hills Fibre Optics Inc., Southwestern Energy Inc. and, Hummingbird Wireless Inc. (Respondents) *(Withdrawn)*

0661-08-R: Bricklayers, Masons Independent Union of Canada Local 1, Universal Workers Union, Labourers' International Union of North America Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. 2130056 Ontario Inc. and/or, Pillar General Contracting Ltd. (Respondents) *(Granted)*

1947-08-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Paradigm Mechanical Incorporated, 2105922 Ontario Inc. c.o.b. as Fusion Sheet Metal (Respondents) *(Granted)*

2246-08-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 759 (Applicant) v. Lebrun Northern Contracting Ltd., Bruno's Contracting (Thunder Bay) Limited, Sparcon Construction Inc. (Respondents) *(Withdrawn)*

2444-08-R: United Food and Commercial Workers International Union Local 175 (Applicant) v. Shopper's World Price Choppers and, Oceans Fresh Food Market and, Sobeys Inc. (Respondents) *(Withdrawn)*

3150-08-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 (Applicant) v. Guy Ethier o/a GE Pipe Fabricators, G. Dugas Welding Inc., RST Pipe Fabricators Inc. (Respondents) *(Withdrawn)*

3391-08-R: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Streetcar Developments Inc. and, Streetcar Construction Ltd. (Respondents) *(Granted)*

SALE OF A BUSINESS

0310-02-R: Brick and Allied Craft Union of Canada (Applicant) v. Ontario Power Generation Inc. and, Brighton Beach Power Ltd. (Respondents) v. ATCO Power Canada Ltd. (Intervener) *(Dismissed)*

0312-02-R: Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. and, Brighton Beach Power Ltd. (Respondents) v. I.B.E.W. Construction Council of Ontario, International Brotherhood of Electrical Workers, Local 773, ATCO Power Canada Ltd. (Interveners) *(Dismissed)*

0727-03-R: Iron Workers District Council of Ontario (Applicant) v. Zimmcor Group Inc., Zimmcor Company, 1071863 Ontario Ltd. c.o.b. as Zimmcor Toronto, Zimmcor (1993) Inc. (Respondents) v. The Ontario Council of the International Union of Painters and Allied Trades, International Union of Painters and Allied Trades, Local 1819-Glaziers, Architectural Glass and Metal Contractors Association (Interveners) *(Dismissed)*

0601-07-R: United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Loblaws Supermarkets Limited, Loblaw Companies Limited, National Grocers Co. Ltd., Joe Mimran and Joe Mimran and Associates Inc. (Respondents) *(Terminated)*

3089-06-R: Bakery Confectionery Tobacco Workers and Grain Millers International Union, Local 242 (Applicant) v. Beta Brands Limited,, Beta Brands U.S.A. Ltd,, Sun Capital Partners Inc. and Sun Beta LLC, Beta Brands (Barbados) Holding SLR (Respondents) *(Withdrawn)*

0601-07-R: United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Loblaws Supermarkets Limited, Loblaw Companies Limited, National Grocers Co. Ltd., Joe Mimran and Joe Mimran and Associates Inc. (Respondents) *(Terminated)*

1409-07-R: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 18 (Applicant) v. City of Hamilton and, Police Services Board (Hamilton) (Respondents) *(Dismissed)*

3293-07-R: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Spadas Decorating & Painting Limited and, Boardwalk Painting & Decorating Inc. (Respondents) *(Granted)*

3542-07-R: Power Workers' Union - Canadian Union of Public Employees, Local 1000, C.L.C. (Applicant) v. Halton Hills Hydro Inc., Halton Hills Energy Inc., Halton Hills Energy Services Inc., Halton Hills Fibre Optics Inc., Southwestern Energy Inc. and, Hummingbird Wireless Inc. (Respondents) *(Withdrawn)*

0661-08-R: Bricklayers, Masons Independent Union of Canada Local 1, Universal Workers Union, Labourers' International Union of North America Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. 2130056 Ontario Inc. and/or, Pillar General Contracting Ltd. (Respondents) *(Granted)*

1947-08-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Paradigm Mechanical Incorporated, 2105922 Ontario Inc. c.o.b. as Fusion Sheet Metal (Respondents) *(Granted)*

2246-08-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 759 (Applicant) v. Lebrun Northern Contracting Ltd., Bruno's Contracting (Thunder Bay) Limited, Sparcon Construction Inc. (Respondents) *(Withdrawn)*

2444-08-R: United Food and Commercial Workers International Union Local 175 (Applicant) v. Shopper's World Price Choppers and, Oceans Fresh Food Market and, Sobeys Inc. (Respondents) *(Withdrawn)*

3150-08-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 (Applicant) v. Guy Ethier o/a GE Pipe Fabricators, G. Dugas Welding Inc., RST Pipe Fabricators Inc. (Respondents) *(Withdrawn)*

UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

3051-08-R: Canadian Office and Professional Employees Union - Local 343 (Applicant) v. Canadian Union of Public Employees and Canadian Union of Public Employees, Local 4501, Canadian Union of Public Employees - Local 5167 (Respondents) *(Granted)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

1776-04-R: Greater Essex County District School Board (Applicant) v. International Brotherhood of Electrical Workers, Local 773 (Respondent) *(Dismissed)*

1778-04-R: Greater Essex County District School Board (Applicant) v. The International Union of Bricklayers and Allied Craftsmen, Local 6 (Respondent) *(Dismissed)*

1794-04-R: Greater Essex County District School Board (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Respondent) *(Dismissed)*

1796-04-R: Greater Essex County District School Board (Applicant) v. The International Union of Painters and Allied Trades, Local 1494 (Respondent) *(Dismissed)*

1797-04-R: Greater Essex County District School Board (Applicant) v. Labourers' International Union of North America, Local 625 (Respondent) *(Dismissed)*

0787-08-R: John MacLean, on his own behalf and on behalf of a group of employees of Canadian Corps of Commissionaires (Ottawa Division) (Applicant) v. Public Service Alliance of Canada (Respondent) v. Canadian Corps of Commissionaires (Ottawa Division) (Intervener) *(Withdrawn)*

Unit: "all employees of the Canadian Corps of Commissionaires (Ottawa Division) at the City of Ottawa, at Health Canada facility, save and except Deputy Section Supervisors and persons above the rank of Deputy Section Supervisor and administrative office employees. (45 employees in unit) (Clarity Note)

2750-08-R: International Association of Bridge, Structural, Ornamental And Reinforcing Iron Workers, Local 759 (Applicant) v. Sparcon Construction Inc. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) *(Withdrawn)*

2873-08-R: Colbey Custom Fabricating Co. Ltd. (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7049 (Respondent) *(Withdrawn)*

3048-08-R: James Sherk (Applicant) v. International Association of Machinists and Aerospace Workers (Respondent) *(Granted)*

Unit: "all its office and clerical employees and employees engaged in shop operating under the rank of supervisor. The employees not covered by this agreement shall be: Supervisors Persons above the rank of supervisor Human Resources

staff Engineering, including Registered Professional Engineers, liaison engineers, project engineers. Secretaries of the Officers of the Company, and Department Heads. All Contract Administrators, Salesmen and Trainers for these positions. Payroll Financial analyst Master Scheduler Sub-contract workers Information Technology Staff Students Cleaning staff Plant securities staff" (78 employees in unit)

3077-08-R: Jocelyne Lavallee (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent)

Unit: "all employees of the Magical Nook Day Care, 3120 Elmview Drive, Hanmer In the City of Greater Sudbury with the exception of Existing Contractors, Program Assistants, Resource Consultants, Support Services such as Physiotherapists and Speech Therapist, Summer Students on "SEED" program, Placement Students from High Schools and Colleges, Volunteers from High Schools and Colleges, Ontario Works Volunteers and Yard Maintenance/Odd Job Worker including supervisors and those above the rank of supervisors" (19 employees in unit) *(Endorsed Settlement)*

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	12
Number of ballots segregated and not counted	0

3106-08-R: Mahdi Zanganeh (Applicant) v. Canadian Union of Public Employees and its Local 4619 (Respondent)

Unit: "employees of the South Asian Family Support Services including their LINC Centres in the City of Toronto, save and except Executive Director, Accountant/Bookkeeper, LINC Program Manager, Administrative Assistants, temporary and casual Employees. Any new positions in which an Employee exercises managerial or confidential functions, within the meaning of the Ontario Labour Relations Act, are also excluded from this bargaining unit." (56 employees in unit) *(Granted)*

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	19
Number of ballots marked against respondent	29
Number of ballots segregated and not counted	0

3113-08-R: Ervin Clayton and Lou Lalos (Applicant) v. Teamster's Local 938 (Respondent) v. Canadian Springs (Intervener)

Unit: "all dependent contractors of Canadian Springs performing agent, distribution and service contracting at all locations within the jurisdictional scope of Teamsters Local Union No. 938, save and except supervisors, persons above the rank of supervisor, office and clerical and employees covered by an existing Collective Agreements." (41 employees in unit) (*Clarity Note*) *(Granted)*

3197-08-R: Debbie Welch (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent)

Unit: "all employees of the Loyal Order of Moose Lodge 844 in the City of Thunder Bay, save and except the manager and persons above the rank of manager." (4 employees in unit) *(Granted)*

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	3
Number of ballots segregated and not counted	0

3234-08-R: Dorie Brouwer (Applicant) v. Ontario Nurses' Association (Respondent) v. Saint Elizabeth Health Care (Intervener)

Unit: "all Registered Nurses and Graduate Nurses engaged in a nursing capacity of Saint Elizabeth Health Care - Durham Region in the Regional Municipality of Durham, save and except Program Managers, persons above the rank of Program Manager, Registered Practical Nurses and Graduate Practical Nurses, Home Support Staff, and office and clerical staff. (44 employees in unit) *(Clarity Note) (Dismissed)*

3235-08-R: Rose Daize (Applicant) v. Ontario Nurses' Association (Respondent) v. Saint Elizabeth Health Care - Durham (Intervener)

Unit: "all office and clerical staff of Saint Elizabeth Health Care - Durham Region in the Regional Municipality of Durham, save and except Program Manager, persons above the rank of Program Manager, Registered Practical Nurses and Graduate Practical Nurses, and Home Support Staff. (45 employees in unit) *(Clarity Note) (Granted)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	10

3472-08-R: John Kavanagh (Applicant) v. Canadian Union of Public Employees Local 4266-07 (Respondent) *(Terminated)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

1632-06-U: Cintas Canada Limited (Applicant) v. United Food & Commercial Workers, Local 206 (Respondent) *(Withdrawn)*

1797-06-U: United Food & Commercial Workers, Local 206 (Applicant) v. Cintas Canada Limited (Respondent) *(Withdrawn)*

3510-06-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Scrubex Floor Maintenance Services Ltd. (Respondent) *(Withdrawn)*

0171-07-U: United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Loblaws Supermarkets Limited, Loblaw Companies Limited, National Grocers Co. Ltd., Joe Mimran and Joe Mimrand and Associates Inc. (Respondents) *(Terminated)*

0449-07-U: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Paradigm Mechanical Incorporated (Respondent) *(Granted)*

1079-07-U: Miguela Bariuan (Applicant) v. UNITE HERE Local 75 (Respondent) *(Granted)*

1865-07-U: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. Paradise Homes Corp. Paradise Homes Cachet Limited Blue Paradise Homes Ltd. Paradise Park Homes Ltd. Paradise Homes Lakeland Inc. Paradise Homes Brittania Inc. Paradise Homes Willow Creek Inc. (Respondent) *(Withdrawn)*

2448-07-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. V.H.L. Developments Inc., Gareene Homes Ltd. and, V.H.L. Developments (Markham Place) Inc. (Respondents) *(Withdrawn)*

2770-07-U: Labourers' international Union of North America, Ontario Provincial District Council (Applicant) v. Dinardo C Group Inc. (Respondent) *(Withdrawn)*

2839-07-U: Jeff McEachern (Applicant) v. Service Employees International Union, Local1.on (Respondent) v. Muskoka Algonquin Healthcare (Intervener) *(Withdrawn)*

3504-07-U: Kevin W. Martin (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 27 (Respondent) v. Electromotive Canada Co. (Intervener) *(Dismissed)*

3539-07-U: Dinardo C Group Inc. (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council (Respondent) *(Withdrawn)*

3582-07-U: Lyle A. Sawtell (Applicant) v. United Steelworkers of America, Local 9597 (Respondent) v. Securitas Canada (Intervener) *(Dismissed)*

3856-07-U: Major Singh, Ranjit Sahota, Wlodek Kubik, Guy Della Fortuna, Balhar Benning, Tim McDougall, Dan Catanus, Murray Youngblut, Satnam Aujla, Allan Tumosa, Rick Nichols, Steve Smith, Dwayne Twyne, Cam Lindup, Shawn Patrick, William Dunne, Simratpal Bhullar, Richard Croke, George Hickey, Gary Broderick, Rick Lehman, Bob Marcotte, Gerrard McCarthy, Gord Jackson, Surjit Kharia, Peter Nemy and John Neilson (Applicant) v. Teamsters Chemical, Energy and Allied Workers Local Union No. 1979 (Respondent) v. Dominion Colour Corporation (Intervener) *(Dismissed)*

0112-08-U: John MacLean and, Simon Bouffard, on their own behalf and on behalf of a group of employees of Canadian Corps of Commissionaires (Ottawa Division) (Applicants) v. Public Service Alliance of Canada (Respondent) v. Canadian Corps of Commissionaires (Ottawa Division) (Intervener) *(Withdrawn)*

0170-08-U: Craig Buchinski (Applicant) v. C.U.P.E. Local 1813 (Respondent) v. Lakeland Energy Ltd. (Intervener) *(Dismissed)*

0344-08-U: Public Service Alliance of Canada (Applicant) v. Canadian Corps of Commissionaires (Ottawa Divison) (Respondent) *(Withdrawn)*

0345-08-U: Public Service Alliance of Canada (Applicant) v. Canadian Corps of Commissionaires (Ottawa Divison) (Respondent) *(Withdrawn)*

0478-08-U: Ken Johnson (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Dismissed)*

0567-08-U: Shane Reynolds (Applicant) v. C.U.P.E. Local 1813 (Respondent) v. Lakeland Energy Ltd. (Intervener) *(Dismissed)*

0797-08-U: Canadian Office & Professional Employees Union Local 343 (Applicant) v. UNITE HERE Ontario Council (Respondent) *(Withdrawn)*

0995-08-U: Canadian Union of Public Employees and its Local 4895 (Applicant) v. Bayfield Homes (Respondent) *(Terminated)*

1041-08-U: Ernie Behm (Applicant) v. Milk and Bread Drivers, Dairy Employees Caterers and Allied Employees Local Union No. 647 (Respondent) v. Gay Lea Foods Co-Operative Ltd. (Intervener) *(Withdrawn)*

1077-08-U: Selvyn Wilson (Applicant) v. Canadian Union of Public Employees Local 905 (Respondent) v. The Regional Municipality of York (Intervener) *(Withdrawn)*

1275-08-U: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Polycon Electric Contractors Ltd., Ashbridge Electric Contractors Ltd. and, Mr. AlexFerrandini (Respondents) *(Withdrawn)*

1290-08-U: Dorota Geca (Applicant) v. Christian Labour Association of Canada (Respondent) *(Dismissed)*

1356-08-U: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Goodfellow Construction Inc. (Respondent) *(Withdrawn)*

1423-08-U: Eric Richer (Applicant) v. CUPE Local 3251 Para (Respondent) *(Granted)*

1577-08-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Paul Brown & Son Excavating Ltd. (Respondent) *(Withdrawn)*

1681-08-U: Service Employees International Union Local 2 Brewery, General and Professional Workers' Union (Applicant) v. Impact Cleaning Services Limited (Respondent) *(Withdrawn)*

1782-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Beneff Concrete Ltd. (Respondent) *(Withdrawn)*

1838-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Dinardo C Group Inc. (Respondent) *(Withdrawn)*

1948-08-U: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Paradigm Mechanical Incorporated, 2105922 Ontario Inc. c.o.b. as Fusion Sheet Metal and Mr. Tim Finney (Respondents) *(Granted)*

2122-08-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1090 (Applicant) v. Fleming Door Products Ltd. (Respondent) *(Withdrawn)*

2177-08-U: International Association of Machinists and Aerospace Workers, District Lodge No. 78 (Applicant) v. Blok-Lok Limited (Respondent) *(Withdrawn)*

2372-08-U: The Ontario Public Service Employees Union (Applicant) v. Lakeland Long Term Care Services Corporation (Respondent) *(Withdrawn)*

2419-08-U: Suleman Tume (Applicant) v. UFCW Local 175 (Respondent) *(Dismissed)*

2526-08-U: Joseph Michael Perpich (Applicant) v. CUPE Local 4523 (Respondent) *(Dismissed)*

2532-08-U: Cyndi Lafond (Applicant) v. CUPE Local 4523 (Respondent) *(Dismissed)*

2675-08-U: Douglas Elliott (Applicant) v. Labourers' International Union of NorthAmerica, Local 183 (Respondent) *(Withdrawn)*

2775-08-U: Nicole Renée Rancourt (Applicant) v. RWDSU (Respondent) *(Dismissed)*

2911-08-U: Canadian Union of Public Employees and its Local 4800 (Applicant) v. Hamilton Health Sciences (Respondent) *(Withdrawn)*

2942-08-U: Patrizia Maine (Applicant) v. United Food and Commercial Workers Union Locals 175 and 633 (Respondent) *(Withdrawn)*

3042-08-U: United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. Sivananthan Sanjeevan, Easton's Toronto Airport Hotel (Caroga) L.P. o/a Fairfield Inn & Suite by Marriott and, UFCW Local 206 (Respondents) *(Terminated)*

3056-08-U: Jeffrey Forde (Applicant) v. Elementary Teachers' Federation of Ontario and (Respondent) v. Avon Maitland District School Board (Intervener) *(Withdrawn)*

3068-08-U: Daniel Molino (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Liquor Control Board of Ontario (Intervener) *(Withdrawn)*

3080-08-U: Donald Bourgeois (Applicant) v. C.E.P. Local 109 (Respondent) *(Withdrawn)*

3082-08-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. T.F.I. Transport L.P. c.o.b. as Universal Contract Logistics (Respondent) *(Withdrawn)*

3100-08-U: Labourers' International Union of North America, Local 837 (Applicant) v. Always Dependable Service Inc. (Respondent) *(Terminated)*

3130-08-U: Canadian Union of Public Employees and its Local 4600-01 (Applicant) v. Carleton University (Respondent) *(Withdrawn)*

3152-08-U: Service Employees International Union Local 2.on, Brewery, General and Professional Workers Union (Applicant) v. Northern Communications Services Ltd. (Respondent) *(Endored Settlement)*

3199-08-U: International Association of Machinists and Aerospace Workers (Applicant) v. Ontario Patient Transfer (Respondent) *(Withdrawn)*

3209-08-U: Teamsters Local Union 847, AFL-CIO-CLC (Applicant) v. Stericycle Inc. (Respondent) *(Withdrawn)*

3212-08-U: Teamsters Canada Rail Conference - Maintenance of Way Employees Division (TCRC-MWED) (Applicant) v. The National Railway Equipment Company (NRE) (Respondent) *(Withdrawn)*

3259-08-U: International Brotherhood of Electrical Workers Local Union 1687 (Applicant) v. Ontario Electrical Construction Co. Ltd. and, EllisDon Corporation and, Guy Logan (Respondents) *(Withdrawn)*

3324-08-U: United Food & Commercial Workers Union Canada, Local 175 (Applicant) v. Silverstein's Bakery Limited (Respondent) *(Withdrawn)*

3419-08-U: Remy John Michael Jarosz (Applicant) v. Toronto Professional Fire Fighters Association Local 3888, International Fire Fighters Association (Respondent) *(Dismissed)*

APPLICATION FOR INTERIM ORDER

3099-08-M: Labourers' International Union of North America, Local 837 (Applicant) v. Always Dependable Service Inc. (Respondent) *(Terminated)*

3221-08-M: Canadian Union of Public Employees (Applicant) v. St. Peter's Residence at Chedoke (Respondent) *(Withdrawn)*

3323-08-M: United Food & Commercial Workers Union Canada, Local 175 (Applicant) v. Silverstein's Bakery Limited (Respondent) *(Withdrawn)*

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

3158-08-M: Prince Foods L.P., Prince Foods Cornwall Division (Applicant) v. United Food & Commercial Workers Canada, Local 175 (Respondent) *(Terminated)*

FINANCIAL STATEMENT

0654-08-M: Stefano Labardo (Applicant) v. Universal Workers Union, Labourers International Union of North America Local 183 (Respondent)

JURISDICTIONAL DISPUTES

1253-08-JD: Sheet Metal Workers' International Association, Local 30 (Applicant) v.International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 and, Sutherland-Schultz Inc. (Respondents) *(Withdrawn)*

1310-08-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 (Applicant) v. Labourers' International Union of North America, Local 1036, Ellis-Don Construction Ltd., DMC Reinforcing Products Ltd. (Respondents) v. Rodmen Employer Bargaining Agency (Intervener) *(Withdrawn)*

2218-08-JD: The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*
2500-08-JD: The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*

2690-08-JD: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. International Brotherhood of Electrical Workers, Local 353, Black & McDonald Limited (Respondents) *(Withdrawn)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

1787-08-M: Communications, Energy and Paperworkers Union of Canada Local 87-M (Southern Ontario Newsmedia Guild) (Applicant) v. Sun Media Corporation c.o.b. Ottawa Sun - A Quebecor Media Company (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

1038-08-OH: James Earl Miller (Applicant) v. Ontario Laser Rentals Ltd. (Respondent) *(Endorsed Settlement)*

1720-08-OH: Cheryl Veitch (Applicant) v. The Crown in Right of Ontario (Liquor Control Board of Ontario) (Respondent) *(Withdrawn)*

1957-08-OH: Steve R. Seguin (Applicant) v. Teleperformance Canada (Respondent) *(Terminated)*

2845-08-OH: Luis Vega (Applicant) v. ECI Canada (Respondent) *(Withdrawn)*

2900-08-OH: Holly Stockfish (Applicant) v. William Nunn (Respondent) *(Withdrawn)*

3062-08-OH: Harry Popovich (Applicant) v. Northern Allied Supply Steel (Respondent) *(Dismissed)*

3171-08-OH: Carol Kuula (Applicant) v. Metro Inc. (Respondent) *(Withdrawn)*

3198-08-OH: Sandra Hill (Applicant) v. Wendy's Restaurant (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

0956-03-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Zimmcor Group Inc., Zimmcor Company, 1071863 Ontario Ltd. c.o.b. as Zimmcor Toronto, Zimmcor (1993) Inc. (Respondents) *(Dismissed)*

1665-05-G: Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters and Teamsters Canada (AFL-CIO-CLC) (Applicant) v. Ontario Power Generation (Respondent) *(Withdrawn)*

2361-05-G: Teamsters Local Union No. 230, Affiliated with the International Brotherhood of Teamsters and Teamsters Canada (AFL-CIO-CLC) (Applicant) v. Hydro One - John St Esplande T.S. (Respondent) *(Withdrawn)*

3384-07-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 2041 (Applicant) v. PCL Constructors Canada Inc. (Respondent) v. International Union of Painters and Allied Trades, Local 1891 (Intervener) *(Withdrawn)*

3637-07-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Le Chateau Carpentry (Respondent) *(Granted)*

3926-07-G: Labourers' International Union of North America, Local 506 (Applicant) v. Cloke-Kirby Construction Limited (Respondent) *(Withdrawn)*

0997-08-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. E. S. Fox Limited (Respondent) *(Dismissed)*

1209-08-G: Labourers' International Union of North America, Local 1036 (Applicant) v. Ellis-Don Construction Ltd. (Respondent) *(Withdrawn)*

1295-08-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Man-Shield (NWO) Construction Inc. (Respondent) *(Withdrawn)*

1653-08-G: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (on behalf of Allied Construction Employees, Local 1030) (Applicant) v. Yukon Construction Inc. (Respondent) *(Granted)*

1655-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yukon Construction Inc. (Respondent) *(Granted)*

2030-08-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Cap Concrete Structures Ltd. (Respondent) *(Withdrawn)*

2379-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Black & McDonald (Respondent) *(Withdrawn)*

2449-08-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. D. Gambini Carpenters Ltd. (Respondent) *(Granted)*

2469-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Miscellaneous Steel Installations Ltd. (Respondent) *(Granted)*

2474-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. T.P. Erection Company Ltd. (Respondent) *(Granted)*

2840-08-G: Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers, Local 2041 (Applicant) v. Ellis-Don Corporation (Respondent) *(Withdrawn)*

2859-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Anthony Orticello c.o.b. as Gala Store Fixtures Inc. (A Cancelled Corporation) (Respondent) *(Granted)*

2927-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Tony's Carpentry Limited (Respondent) *(Endorsed Settlement)*

3059-08-G: United Brotherhood of Carpenters & Joiners of America, Local Union 494 (Applicant) v. Trojan Interior Contracting (2002) Limited (Respondent) *(Terminated)*

3070-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. B&B Millwork Inc. and Brenda Arnason (Respondent) *(Endorsed Settlement)*

3076-08-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. J.R.L. Enterprise Inc. (Respondent) *(Granted)*

3097-08-G: The United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Pace Enterprises (1998) Inc. (Respondent) *(Granted)*

3142-08-G: Carpenters' Union, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America (Applicant) v. Century Group Inc. (Respondent) *(Withdrawn)*

3153-08-G: The United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. Ontario Panelization, a division of Exterior Wall Systems Ltd. (Respondent) *(Withdrawn)*

3156-08-G: The International Union of Painters and Allied Trades, Local Union 1494 (Applicant) v. 426968 Ontario Ltd. o/a Air-O Systems (Respondent) *(Granted)*

3184-08-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Goldcrest Interior Contractors Inc. (Respondent) *(Granted)*

3185-08-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Vanbet Services Inc. (Respondent) *(Granted)*

3188-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. Pace Enterprises (1998) Inc. (Respondent) *(Granted)*

3210-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrastone Construction Inc. and, Ron Colucci (Respondents) *(Endorsed Settlement)*

3215-08-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. 1482854 Ontario Inc. o/a Rancom (Respondent) *(Granted)*

3217-08-G: The International Union of Painters and Allied Trades, Local Union 1494 (Applicant) v. Basile Interiors Ltd. (Respondent) *(Granted)*

3231-08-G: Masonry Industry Employers' Council of Ontario and Ontario Masonry Contractors' Association - Bacu Bargaining ("OBBC") (Applicant) v. Limen Masonry Limtied, Limen Group Ltd., Limen Masonry (2003) Inc., Limen Entreprises (2003) Inc. Jomil Renovations Ltd. (formerly Acmar Masonry Inc.) and Acmar Group Ltd. (Respondent) v. Brick and Allied Craft Union of Canada, Local 29 (Intervener) *(Granted)*

3248-08-G: United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Loaring Construction 1603878 Ontario Limited (Respondent) *(Terminated)*

3254-08-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Goldcrest Interior Contractors Inc. and, Frank Monastero (Respondents) *(Endorsed Settlement)*

3258-08-G: International Brotherhood of Electrical Workers Local Union 1687 (Applicant) v. Ontario Electrical Construction Co. Ltd. (Respondent) *(Withdrawn)*

3271-08-G: Universal Workers Union, L.I.U.N.A, Local 183 (Applicant) v. Dominus Construction Corporation and/or, Myriad Dominus Construction Corporation and/or, 88 On Broadway Inc. (Respondents) *(Granted)*

3273-08-G: Universal Workers Union, L.I.U.N.A., Local 183 (Applicant) v. Dominus Construction Corporation and/or, Myriad Dominus Construction Corporation and/or, 88 On Broadway Inc. (Respondents) *(Granted)*

3294-08-G: The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. Clegg Glass (2008) Inc. (Respondent) *(Granted)*

3319-08-G: International Brotherhood of Painters and Allied Trades, Local Union 1819 (Applicant) v. YAG Limited (Respondent) *(Granted)*

3327-08-G: Labourers' International Union of North America, Local 1081 (Applicant) v. Pace Enterprises (1998) Inc. (Respondent) *(Granted)*

3328-08-G: Labourers' International Union of North America, Local 837 (Applicant) v. Pace Enterprises (1998) Inc. (Respondent) *(Granted)*

3332-08-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Erinwall Decorating Limited (Respondent) *(Granted)*

3349-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cap Concrete Structures Ltd. (Respondent) *(Granted)*

3390-08-G: Labourers' International Union of North America, Local 625 (Applicant) v. Lakeside Pools and Concrete (Respondent) *(Withdrawn)*

APPEALS - EMPLOYMENT STANDARDS ACT

1155-07-ES: Gim's Sizzle 'N Chill Ltd. (Applicant) v. Tonya Kelly, Natasha Renaud, Director of Employment Standards (Respondents) *(Dismissed)*

1406-07-ES: Trade Tech Industries (Applicant) v. Jamie McWilliams and, Director of Employment Standards (Respondents) *(Dismissed)*

1853-07-ES: Dynatec Corporation (Applicant) v. Jodi Gashulak and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2714-07-ES: Marsha Armstrong (Applicant) v. The Regional Municipality of Halton, and, Director of Employment Standards (Respondents) *(Withdrawn)*

3718-07-ES: Robert Burns (Applicant) v. Halton Recycling Ltd. and, Director of Employment Standards (Respondents) *(Dismissed)*

0099-08-ES: Sante DiDonato, Mario DiDonato and Brent Gawne, Directors of 1314744 Ontario Inc. o/a Advanced Controls and Engineering Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

0286-08-ES: Diane Nuziale (Applicant) v. Accredited Home Lenders Canada, Inc. / Preteurs Residentiels Accredites Canada, Inc. and, Director of Employment Standards (Respondents) *(Withdrawn)*

0333-08-ES: Virginia Zoll (Applicant) v. The Mediation Centre Inc. o/a Family Mediation Centre and, Director of Employment Standards (Respondents) *(Withdrawn)*

0380-08-ES: 2127370 Ontario Ltd. o/a Coffee Supreme (Applicant) v. Zhang Xuan and, Director of Employment Standards (Respondents) *(Granted)*

0464-08-ES: Bayshore Hairstylist (Applicant) v. Ms. Novlet Young, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0473-08-ES: Fence Masters Inc. (Applicant) v. Gavin Jeffray and, Director of Employment Standards (Respondents) *(Granted)*

0520-08-ES: Irene Parlanis (Applicant) v. Gemma Communications Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0687-08-ES: Senthivel Paramsothy (Applicant) v. Sivayogan Nagaratnam o/a CPM Canadian Power Master, Director of Employment Standards (Respondents) *(Granted)*

0800-08-ES: Nezir Koliqi (Applicant) v. Impact Tool & Mould (Windsor) Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

1016-08-ES: Adexa Inc. (Applicant) v. Ellen Trinh and, Director of Employment Standards (Respondents) *(Withdrawn)*

1352-08-ES: 2008631 Ontario Ltd. o/a Double Double Pizza and Chicken (Applicant) v. Solomon Rivers and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1471-08-ES: 1422718 Ontario Inc. o/a Acura of Barrie (Applicant) v. Lindsay Brabant and, Director of Employment Standards (Respondents) *(Terminated)*

1472-08-ES: Lindsay Brabant (Applicant) v. 1422718 Ontario Inc. o/a Acura of Barrie and, Director of Employment Standards (Respondents) *(Terminated)*

1527-08-ES: Craig Stephens director of Up Country Canada Inc. (Applicant) v. Director of Employment Standards, Mr. Joel Anderson, Mr. Ghulam Asif, Ms. Bernadette Avero, Ms. Anne Barusta, Mr. Derrick Bingham, Ms. Allison Boran, Ms. Shannon Bury, Ms. Sally Chan, Ms. Bradley Chatwin, Mrs. Marina Chaykovska, Ms. Jackie Clarke, Mr. Jonathan Comsa, Mr. George Cornwaite, Mr. Jonathan Court, Ms. Diana Curtie, Ms. Trinia Davenport, Mr. Alexander Dejesus, Mr. Tyrone Dias, Mr. Derek G. Evans, Ms. Liliana Gianbattista, Mr. Daniel Gouveia, Mr. Chris Kastoris, Mr. Scott Kay, Mr. Alvin Kim, Mr. David Kim, Ms. Sara Kim, Ms. Alla Kireeva, Mr. Daniel Landry, Mr. David Lasso, Mr. Daniel Manafo, Mr. Shane Masoodi, Mrs. Monica Masseur, Ms. Holly Young, Mr. Woodrow Monteiro, Mr. Salmon Muzaffar, Ms. Shannon O'Brien, Ms. Kathlyn Ouellette, Ms. Michelle Parker, Ms. Mariana Pupic, Mrs. Valeria Qualizza, Ms. Janet Ramsay, Mr. David Robertson, Ms. Patricia Rogers, Ms. Sara Rowbotham, Mr. Peter Sanfrancesco, Mr. David Stock, Mr. Mike Smdyka, Mr. Galo Tello, Ms. Kathy Tsoi, Mr. Spencer Vandry, Mrs. Daryl Weese, Ms. Kathy Winfield, Ms. Dzeneta Zunic, Mr. Yu Huang Wu, Mr. Simon Wong (Respondents) *(Dismissed)*

1543-08-ES: Kyle William Harvey (Applicant) v. Jon Robert Robertson o/a Jag Marketing & Communications, Director of Employment Standards (Respondents) *(Terminated)*

1569-08-ES: Lorna R. Magsombol (Applicant) v. Fileco Inc. and, Director of Employment Standards (Respondents) *(Withdrawn)*

1738-08-ES: PDCJG Office Management Inc. o/a Prouse Dash & Crouch, LLP (Applicant) v. Sandra Pasquale and, Director of Employment Standards (Respondents) *(Granted)*

1892-08-ES: Ranjit Singh Brar (Applicant) v. AJA Trucking Inc., Director of Employment Standards (Respondents) *(Dismissed)*

1899-08-ES: Green Spa, 1712682 Ontario Ltd. (Applicant) v. Director of Employment Standards (Respondent) *(Withdrawn)*

2033-08-ES: Claudia DiNatale, director of Fillmore East Food and Beverage Inc. (Applicant) v. David H. Grascoeur and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2069-08-ES: Murray Wholesale Inc. (Applicant) v. Mandy Woodworth and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2102-08-ES: Debt Control Agency (Applicant) v. Sarah Appleby and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2120-08-ES: Ted Proczek (Applicant) v. Bram City Taxi, a.k.a. A-Dial-A-Cab Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2245-08-ES: Etobicoke Dental Associates (Applicant) v. Shraddha Agnihotri, Pushplata Singh Bhada, Mira Bobic, Elaine Chong, Meyling Culmone, Jasmina Firdus, Megan Hanley, Dany Hebert, Charie Marasigan, Nuvia Ruiz, Tracy

Scroccaro, Heidi Slaptsis, Marina Stamatovic, Narine Stepanian and, Director of Employment Standards (Respondents) *(Withdrawn)*

2279-08-ES: Queen Bamedele (Applicant) v. Powder Coaters Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2286-08-ES: Melieke Williams (Applicant) v. Dr. Graeme Hibberd and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2289-08-ES: Giovanni Velcich (Applicant) v. Sling Choker Mfg. (Sault) Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2300-08-ES: B.A. (Applicant) v. Hunt Personnel, and, Director of Employment Standards (Respondents) *(Dismissed)*

2337-08-ES: Barry Arthur Scrimgeour (Applicant) v. Citair Inc. o/a General Coach and, Director of Employment Standards (Respondents) *(Dismissed)*

2393-08-ES: Eddie M. H. Wong (Applicant) v. TCS Express Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2405-08-ES: Darla Young (Applicant) v. 1140190 Ontario Limited o/a East Side Mario's and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2416-08-ES: Baraka Hospitality Group o/a Super 8 Cambridge (Applicant) v. Nadine Speed and, Director of Employ

2574-08-ES: 1614668 Ontario Inc. o/a Walt's Grill & Bar (Applicant) v. Stephen Penny and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2622-08-ES: 1704803 Ontario Inc. o/a Subway Sandwiches (Applicant) v. Roldan Oloroso, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2637-08-ES: Fresh Touch Medi-Spa (Applicant) v. Perla Garrido and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2702-08-ES: Frank's Feather and Fin Limited o/a Tim Hortons (Applicant) v. Jacqui Winchester and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2715-08-ES: Shiva Zareian (Applicant) v. Implo Technologies Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2737-08-ES: Sandra Crawford (Applicant) v. 1280537 Ontario Inc. o/a Shoberry's Day Care Centre and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2745-08-ES: Jennifer Benstead (Applicant) v. Convergys New Brunswick, Inc. o/a Convergys CMG Canada Limited Partnership, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2749-08-ES: Shalom Jhirad (Applicant) v. 1695184 Ontario Inc. o/a Cora's Breakfast & Lunch and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2756-08-ES: Martin Rejzek (Applicant) v. Masaryk Memorial Institute Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2817-08-ES: Desiree Simon (Applicant) v. Canadian Tire Corporation, Limited c.o.b. Partsource and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2818-08-ES: Country Green Homes Inc. (Applicant) v. L. Giuditta and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2844-08-ES: Partners In Credit Inc. (Applicant) v. Alexia Schikschneit and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2977-08-ES: NB Spring & Manufacturing Ltd. (Applicant) v. Pranam Matagoolam and, Director of Employment Standards (Respondents) *(Dismissed)*

2987-08-ES: Helen MacDonald (Applicant) v. 1582416 Ontario Limited o/a Tim Hortons, Director of Employment Standards (Respondents) *(Withdrawn)*

2995-08-ES: Mane Society Salon & Spa (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

2996-08-ES: Mane Society Salon & Spa (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

3021-08-ES: The Sales Institute of Canada (Applicant) v. Charlene Morris and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3030-08-ES: David W Houghton (Applicant) v. York Region District School Board and, Director of Employment Standards (Respondents) *(Dismissed)*

3038-08-ES: Peter Check a.k.a. Peter Vincent Check and, All Pool Solutions, APS, Aquatic Pool Solutions, Aquatic Mgmt. Solutions, Aquatic Solutions, All Ontario Recreation, All Ontario Recreational, All Ontario Recreational Services Inc., All Ontario Recreational Supplies Limited, All Ontario Snow Services Inc., Ontario Recreational Services Inc., The Pool Operators Inc., Snow Check, 619116 Ontario Ltd., 966959 Ontario Ltd., 1071297 Ontario Ltd., 2059574 Ontario Inc., 2092263 Ontario Inc., 2011300 Ontario Inc., 2118541 Ontario Inc., 21184541 Ontario Inc. (Applicants) v. Omid Amirtabar, Travis A. Bailey, Sarah Balmer, Jonathan A. Boyle, Michael Boyle, Marianne Cuellar, Craig N. Fisher, Sara Gasior, Alexis P. Godlington, Harry D. Guloien-Olmsted, Kelly A. Hagans, Hung Hoang, William Jeyasingham, Ana Katic, Jessica G. Machado, Takahide Marsyda a.k.a. Ted Matsuda, Pavlo Okhota, Jorge F. Pingel, Blair E. Pinnell, Damir Ruscukic, Paul Rusu, Irfan Walji, Heather Watts, Lorraine Whiting, Katelyn M. Wong, Julie P. Xie and, Director of Employment Standards (Respondents) *(Dismissed)*

3039-08-ES: Peter Check and, 2092263 Ontario Inc., Aquatic Pool Solutions, 966959 Ontario Ltd., All Ontario Snow Services Inc., 1071297 Ontario Ltd., All Ontario Recreational Supplies Limited, All Pool Solutions, Snow Check, 2011300 Ontario Inc., All Ontario Recreation, All Ontario Recreational, All Ontario Recreational Services Inc., Ontario Recreational Services Inc., The Pool Operators Inc., 2118541 Ontario Inc. (Applicants) v. Carryn R. Am, Egor Avrutin, Erica Barbazza, Maya Bourgon, William Chidiac, Neil Cook, Harris Davy, Angelika Dymek, Katie Few, Erin Gough, Julia Hopici, Ann Kamiyama, Julia Mansfield, Gillian Moore, Jacques Murphy, Thameena Nazir, Monica Piatek, Farzad Refahi, Ramin Sadat, Lindsay Sangster, Kimberley Sweeny, Leon Vorobeichik, Dylan Xu, Eric Zimmermann, Director of Employment Standards (Respondents) *(Dismissed)*

3050-08-ES: Modatek Systems (Applicant) v. Daniel Yesin and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3176-08-ES: Cameron Trucking Ltd. (Applicant) v. Ian Anderson and, Director of Employment Standards (Respondents) *(Dismissed)*

3246-08-ES: Coss Systems Inc. (Applicant) v. Ahti 'Tap' Aavasalmi and, Director of Employment Standards (Respondents) *(Terminated)*

3260-08-ES: Mark Gentilin (Applicant) v. Direct Energy Marketing Limited o/a Direct Energy Essential Services and Director of Employment Standards (Respondents) *(Dismissed)*

3267-08-ES: Peter Ruttan (Applicant) v. Durham Housing Non-Profit Corporation and, Director of Employment Standards (Respondents) *(Terminated)*

3268-08-ES: Multi Cabinets & Millwork (Applicant) v. Daniel Lafreniere and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3283-08-ES: Patricia Kimball (Applicant) v. Our Kids Child Care Lambton Inc. and, Director of Employment Standards (Respondents) *(Terminated)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1432-08-HS: Her Majesty The Crown in Right of Ontario as represented by the Ministry of Community Safety and Correctional Services (Applicant) v. Ontario Public Service Employees Union, and, Rick Taggart, Inspector (Respondents) *(Terminated)*

2040-08-HS: Bruce Power Inc. (Applicant) v. Power Workers' Union, Society of Professional Engineers, Kevin Deneve, Inspector (Respondents) *(Withdrawn)*

CECBA - EXEMP: RELIGIOUS CONVICTION/BELIEF

2343-08-M: Eva Bednarska (Applicant) v. SEIU Local 2, Commissionaires Great Lakes (Respondents) *(Dismissed)*

PAY EQUITY ACT

1593-07-PE: Pay Equity Commission (Applicant) v. Gian Daycare Limited (Respondent) *(Dismissed)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2574-04-R: Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 800 (Applicant) v. 1040523 Ontario Limited c.o.b. as Norfab Metal and Machine, Norfab Construction Ltd., and/or, 1630648 Ontario Limited c.o.b. as Norfab Metal and Machine and/or, 1520247 Ontario Inc. c.o.b. as Pro Pipe Construction and/or Pro Sales Services (Respondents) *(Dismissed)*

0409-07-ES: David Halpin (Applicant) v. Mari-Sophia Encarnacion and, Director of Employment Standards (Respondents) *(Dismissed)*

0410-07-ES: David Halpin (Applicant) v. Ashleigh Leeson and, Director of Employment Standards (Respondents) *(Dismissed)*

3306-07-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. La Château Carpentry (Respondent) *(Dismissed)*

0081-08-U: Abela Berhanue (Applicant) v. Universal Workers Union L.I.U.N.A. Local 183 (Respondent) v. Metropolitan Toronto Condominium Corp. No. 638 (Intervener) *(Dismissed)*

1446-08-R: Brick and Allied Craft Union of Canada (Applicant) v. Riverstone Masonry Inc. (Respondent) v. Trevor Lockyer, Derrick Van Den Berg, Nelson Gower, Jamie Rutter, J. Bruce Barclay, Jason Veldman and Mark Kleyn (Intervener) *(Dismissed)*

1447-08-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Riverstone Masonry Inc. (Respondent) v. Brandon Rodwell, Justin Vanhevel, Shawn Norrie, Joe Yeoman, Justin McKay. Brady Becker and Joshua DeGraaf (Intervener) *(Dismissed)*

1448-08-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Riverstone Masonry Inc. (Respondent) *(Dismissed)*

1449-08-U: Brick and Allied Craft Union of Canada (Applicant) v. Riverstone Masonry Inc. (Respondent) *(Dismissed)*

1754-08-U: Edouard McLaughlin (Applicant) v. Construction & Allied Workers Local Union 607 (Respondent) *(Dismissed)*

1916-08-R: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. M.A. Constructors Limited (Respondent) (Disposition not available)

2361-08-U: Marc Grandmaison (Applicant) v. Canadian Union of Public Employees Local 1623 (Respondent) v. Hôpital Régional de Sudbury Regional Hospital (Intervener) *(Dismissed)*

2426-08-U: Veronica Larmond (Applicant) v. Service Employees International Union Local 1.ON ("SEIU") (Respondent) *(Dismissed)*

2484-08-R: International Union of Operating Engineers, Local 793 (Applicant) v. Graham Bros. Construction Limited (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council (Intervener) *(Dismissed)*

2558-08-ES: Thornbury Grandview Farms Sales Ltd. (Applicant) v. Kenneth Church and, Director of Employment Standards (Respondents) *(Dismissed)*

2606-08-ES: Iain Rousay (Applicant) v. National Money Mart Inc., Director of Employment Standards (Respondents) *(Dismissed)*

2909-08-G: International Union of Bricklayers and Allied Craftsmen Local 2/Brick and Allied Craft Union of Canada Local 2 (Applicant) v. 938055 Ontario Inc. c.o.b. as Reftec (Respondent) *(Dismissed)*

2963-08-ES: Pierre Laframboise (Applicant) v. Ménard Roof Trus Inc. and, Director ofEmployment Standards (Respondents) *(Dismissed)*

3104-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Merlin Restoration Ltd. and/or, Merlin Family Homes and/or, Merlin Homes Ltd. (Respondents) *(Granted)*

CASE LISTINGS MARCH 2009

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MARCH 2009

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

3231-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Raymac Custom Homes and/or Raymac Corporation (Respondent)

Unit: "all journeymen and apprentice carpenters and all construction labourers in the employ of Raymac Custom Homes and/or Raymac Corporation in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3889-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Killultagh Construction Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Killultagh Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Killultagh Construction Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

0153-08-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. T. Wayne Lawson Construction Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of T. Wayne Lawson Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of T. Wayne Lawson Construction Ltd. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1469-08-R: The International Union of Painters and Allied Trades, Local Union 1590 (Applicant) v. Abby Services Inc. and Abby Services (Arva) Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Abby Services Inc. and Abby Services (Arva) Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Abby Services Inc. and Abby Services (Arva) Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1772-08-R: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. 1440842 Ontario Inc. o/a Kyiv Architectural Metals (Respondent)

Unit: "all glaziers and glaziers' apprentices and metal mechanics in the employ of 1440842 Ontario Inc. o/a Kyiv Architectural Metals in the industrial, commercial *and institutional sector of the construction industry* in the Province of Ontario, and all glaziers and glaziers' apprentices and metal mechanics in the employ of 1440842 Ontario Inc. o/a Kyiv Architectural Metals in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

2432-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Peter Esposito o/a A Plus Masonry (Respondent)

Unit: "all construction labourers in the employ of Peter Esposito o/a A Plus Masonry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Peter Esposito o/a A Plus Masonry in all sectors of the construction industry in within a radius of 33 kilometers (approximately 20 miles) of the North Bay post office, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3275-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Montgomery Mechanical Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Montgomery Mechanical Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Montgomery Mechanical Ltd. in all sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3430-08-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Trudel & Sons Roofing Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Trudel & Sons Roofing Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Trudel & Sons Roofing Limited in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

3443-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Curb-Con Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Curb-Con Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Curb-Con Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working-foreman" (2 employees in unit)

3459-08-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. T. A. Andre & Sons (Ontario) Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of T. A. Andre & Sons (Ontario) Limited in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector and the electrical power systems sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3575-08-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Custom Aluminum, Inc. (Respondent)

Unit: "all sheet metal workers, sheet metal workers apprentices, sheeters, sheeters' assistants and material handlers in the employ of Custom Aluminum, Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the Regional Municipality of Durham, the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (18 employees in unit)

3589-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Royal Construction (Amenagement) Inc. (Respondent)

Unit: "all construction labourers in the employ of Royal Construction (Amenagement) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Royal Construction (Amenagement) Inc. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3635-08-R: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Cougar Electric Ltd. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Cougar Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Cougar Electric Ltd. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3638-08-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. McLean Taylor Construction Limited (Respondent)

Unit: "all construction labourers and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of McLean Taylor Construction Limited in all sectors of the construction industry in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

3667-08-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Domingos Da Silva Figueiredo c.o.b. as D. F. Drywall Services and Karen Elaine Galjot-Kelsey c.o.b. as A-1 Drywall (Respondent)

Unit: "all painters and painters' apprentices in the employ of Domingos Da Silva Figueiredo c.o.b. as D. F. Drywall Services and Karen Elaine Galjot-Kelsey c.o.b. as A-1 Drywall in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all painters and painters' apprentices in the employ of Domingos Da Silva Figueiredo c.o.b. as D. F. Drywall Services and Karen Elaine Galjot-Kelsey c.o.b. as A-1 Drywall in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit) *(Clarity Note)*

Bargaining Agents Certified Subsequent to Vote

0116-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. Rainbow Concrete Industries Ltd. (Respondent)

Unit: "all employees of Rainbow Concrete Industries Ltd. working in, at, and out of 2477 Maley Drive Sudbury, Ontario save and except office and clerical staff, sales staff, students, non-working forepersons and persons above the rank of non-working forepersons." (60 employees in unit)

Number of names of persons on revised voters' list	96
Number of persons who cast ballots	96
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	72
Number of segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names do not appear on voters' list	27
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	32
Number of ballots segregated and not counted	24

3641-06-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Colombus Aluminum and Roofing Ltd. (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all employees (workers) of Columbus Aluminum and Roofing Ltd. who perform the work described in the clarity note below, as well as the metalmen who perform the work described in the clarity note below, excluding non-working foremen, hourly service men, flat roofers, aluminum/vinyl applicators, persons engaged in re-roofing, office, warehouse/shop workers, clerical workers and persons above the rank of foreman, engaged in the application of shingles and other roofing materials in new subdivision work (three or more units) in residential low-rise buildings (defined as non-elevated housing of not more than four (4) stories in height excluding basement) in the Province of Ontario, save and except the industrial, commercial and institutional sector. For additional clarity custom homes are excluded" (27 employees in unit) *(Clarity Note)*

4193-06-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Expert Eavestroughing (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all construction workers of the contractor [Expert Eavestroughing] engaged in new residential subdivision construction (defined as 3 or more units) in residential lowrise buildings (defined as non-elevated housing of not more than 4 storeys in height excluding basement) in the installation of aluminum and vinyl siding, eavestroughing, soffit

and fascia, in the Province of Ontario, save and except the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman." (5 employees in unit)

0160-07-R: International Union of Operating Engineers, Local 793 (Applicant) v. TWD Roads Management Inc. (Respondent)

Unit: "all employees of TWD Roads Management Inc. employed in the Township of Severn and at 2224 Flos Road, Hillsdale, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical, and sales staff." (20 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	10
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	0

1755-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. PPG Canada Inc., Liberty Staffing Services Inc. and, The Staffing Edge Inc. (Respondents)

Unit: "all employees of PPG Canada Inc., Liberty Staffing Services Inc. and/or The Staffing Edge Inc. employed at 560 Conestoga Boulevard in the City of Cambridge, save and except supervisors, and persons above the rank of supervisors, office, sales and clerical staff" (79 employees in unit)

Number of names of persons on revised voters' list	79
Number of persons who cast ballots	68
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	61
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	38
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	6

3286-08-R: International Union of Operating Engineers, Local 793 (Applicant) v. John Rintala Trucking (Respondent)

Unit: "all employees employed by John Rinalta Trucking working in and out of the City of Greater Sudbury, Ontario save and except non-working foreman, office and clerical staff" (16 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	4

Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

3432-08-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Kerry (Canada) Inc. (Respondent)

Unit: "all laboratory technician employees of Kerry (Canada) Inc. at Woodstock, Ontario, save and except forepersons, persons above the rank of foreperson, office staff, sales staff, and all quality Assurance staff other than laboratory technicians." (3 employees in unit) *(Clarity Note)* *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3435-08-R: Service Employees International Union Local 2 Brewery, General and Professional Workers Union (Applicant) v. Allen Maintenance Limited (Respondent)

Unit: "all employees of Allen Maintenance Limited working at 100 Bayshore Dr. in the City of Ottawa, Ontario, save and except supervisors and those above the rank of supervisor and persons above the rank of supervisor and persons performing designated permanent project work" (23 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	2

3444-08-R: Canadian Union of Public Employees (Applicant) v. Abigail's Learning Center Inc. (Respondent)

Unit: "all employees employed at Abigail's Learning Center Inc. in the City of Belleville Ontario save and except managers and persons above the rank of manager" (20 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

3478-08-R: Canadian Union of Public Employees (Applicant) v. Cassellholme, East Nipissing Home for the Aged (Respondent) v. Service Employees International Union Local 1 Canada (Intervener)

Unit: "all activity and daycare employees employed at Cassellholme East Nipissing Home for the Aged in the City of North Bay, Ontario, save and except Activity Leaders, Volunteer Coordinators, Managers and persons above the rank of manager and any employee already represented by a union" (5 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

3500-08-R: Canadian Industrial, Entertainment and Warehouse Workers' Union (Applicant) v. Martin-Brower of Canada Co. (Respondent) v. Teamsters Local Union No. 419 (Intervener)

Unit: "all employees of Martin-Brower of Canada Co. working in and out of Brampton, Ontario, save and except Supervisors, persons above the rank of Supervisor, office and sales staff and persons who have not accumulated 480 working hours" (139 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	139
Number of persons who cast ballots	97
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	96
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	96
Number of ballots marked against applicant	1

3549-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Unimin Canada Ltd. (Respondent)

Unit: "all employees of the Badgeley Island Operations of Unimin Canada Ltd. in the Municipality of Killarney, save and except supervisors and persons above the rank of supervisor" (20 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

3624-08-R: Teamsters Local Union 91 (Applicant) v. Stock Transportation Ltd. (Respondent)

Unit: "all mechanics, lube techs, apprentices and lead hands employed by Stock Transportation Ltd. in its garage at 101 Alti Place, Ottawa, Ontario, excluding supervisors and those above the rank of supervisor" (12 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

3625-08-R: U.F.C.W. Local 333 (Applicant) v. Innvest Hotels GP Ltd. o/a Pickering Comfort Inn (Respondent)

Unit: "all front desk employees including night auditors of the Innvest Hotels GP Ltd. o/a Pickering Comfort Inn hotel located at 533 Kingston Road, Pickering, Ontario, and the Regional Municipality of Durham, save and except housekeeping employees, laundry employees, breakfast employees, houseperson employees, maintenance, maintenance helpers, security staff, supervisors, persons above the rank of supervisor, office and clerical staff" (9 employees in unit) *(Clarity Note) (Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

0701-08-R: Canadian Construction Workers' Union (Applicant) v. Priest Rebar Placement Inc. (Respondent) v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721, Universal Workers Union, Labourers' International Union of North America, Local 183, Formwork Council of Ontario, Labourers' International Union of North America, Ontario Provincial District Council (Interveners)

0739-08-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. AGI Traffic Technology Inc. (Respondent) v. International Brotherhood of Electrical Workers, Local Union 353 (Intervener)

3455-08-R: United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Aluminum Pro Inc. (Respondent) v. Sheet Metal Workers' International Association, Local 51 (Intervener)

Applications for Certification Dismissed Subsequent to Vote

1287-08-R: United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. Plum Corporation (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of the responding party in all other sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3109-08-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. SIMS Group Recycling Solutions Canada Ltd. (Respondent)

Unit: "all employees of Sims Recycling Solutions employed in the region of Peel, save and except supervisors, persons above the rank of supervisors and office staff" (31 employees in unit)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	31
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	0

3326-08-R: Labourers' International Union of North America, Local 506 (Applicant) v. 923441 Ontario Limited, c.o.b. as Ontario Promotional Services (Respondent)

Unit: "all employees of 923441 Ontario Limited c.o.b. as Ontario Promotional Services in the City of Mississauga save and except sales, office and clerical staff, supervisors and persons above the rank of supervisor and persons covered by subsisting Collective Agreements" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	2

Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	3

3428-08-R: Public Service Alliance of Canada (Applicant) v. Alta Vista Animal Hospital (Respondent)

Unit: "all employees of the Responding Party working in the City of Ottawa, Ontario, save and except veterinarians, technical managers and those above the rank of technical manager, employees in the finance and human resources departments, runners and medical transcriptionists. Clarity note: Technical manager includes CSR managers and Tech managers, but not Inventory managers or anyone below the rank of CSR manager and Tech manager." (76 employees in unit)

Number of names of persons on revised voters' list	122
Number of persons who cast ballots	115
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	69
Number of segregated ballots cast by persons whose names appear on voter's list	44
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	60
Number of ballots segregated and not counted	46

3457-08-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Waterloo (Respondent)

Unit: "all inside employees of The Corporation of the City of Waterloo, save and except supervisors, persons above the rank of supervisor, persons employed in Human Resources, casual employees, students, and those persons covered by an existing collective agreement" (196 employees in unit) (Clarity Note)

Number of names of persons on revised voters' list	197
Number of persons who cast ballots	240
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	180
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	56
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	125
Number of ballots segregated and not counted	55

3508-08-R: Canadian Union of Public Employees (Applicant) v. St. Peter's Residence at Chedoke (Respondent)

Unit: "all Customer Service clerks employed at St. Peter's Residence at Chedoke in the City of Hamilton, save and except supervisors and persons above the rank of supervisor, and those persons covered by an existing collective agreement" (9 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	1

3647-08-R: Graphic Communication Conference/International Brotherhood of Teamsters Local 100-M (Applicant) v. Peel Plastic Products Ltd. (Respondent)

Unit: "all employees of Peel Plastic Products Ltd. in the Region of Peel in the Province of Ontario, save and except supervisors, persons above the rank of supervisor, office and clerical staff." (130 employees in unit)

Number of names of persons on revised voters' list	156
Number of persons who cast ballots	149
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	135
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	106
Number of ballots segregated and not counted	14

Applications for Certification Withdrawn

0492-04-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bay Star Homes Limited (Respondent)

0397-07-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. CRO Aluminum Inc. (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

0398-07-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Goreski Roofing and Lathing Ltd. (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

0401-07-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Scott Concrete Limited (Respondent)

1093-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 2063889 Ontario Ltd. operating as Mapleville Construction & Development and/or Mapleville Construction (Respondent)

1697-08-R: Labourers International Union of North America Ontario Provincial District Council (Applicant) v. Westin Homes Ltd. (Respondent)

2746-08-R: Labourers' International Union of North America, Local 625 (Applicant) v. Front Construction Industries Inc. (Respondent) v. Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers, Local 494 (Intervener)

2805-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Colin's Haulage Inc. (Respondent)

3164-08-R: International Union of Operating Engineers, Local 793 (Applicant) v. Sal-Dan Developments Limited (Respondent)

3345-08-R: Retail, Wholesale & Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Auto-Pak Ltd. o/a Benson Autoparts and/or Auto Parts Extra (Respondent)

3509-08-R; 3531-08-R; 3550-08-R: The Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. City of Greater Sudbury (Respondent)

3555-08-R: The Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. City of Greater Sudbury (Respondent)

3567-08-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Brockville (Respondent)

3574-08-R: The Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. City of Greater Sudbury (Respondent)

3646-08-R: Service Employees International Union Local 2 Brewery, General and Professional Workers' Union (Applicant) v. Ability Janitorial Services Limited (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1910-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. PPG Canada Inc., Liberty Staffing Services inc. and, The Staffing Edge Inc. (Respondents) *(Granted)*

2591-07-R; 2602-07-R: Brick and Allied Craft Union of Canada, Local 5 and International Union of Bricklayers and Allied Craftworkers, Local 5 (Applicant) v. Cruz Construction & Renovation Inc., Aliance Construction Group Inc., Aliance Masonry (2005) Ltd., Aliance Construction Ltd., Baden Masonry Inc. and, A & D Masonry Consulting Ltd. (Respondents) v. Masonry Industry Employers' Council of Ontario (Intervener); Labourers' International Union of North America, Local 1059 (Applicant) v. Cruz Construction & Renovation Inc., Aliance Construction Ltd., Aliance Construction Group Inc., Aliance Masonry (2005) Ltd., Baden Masonry Inc. and, A & D Masonry Consulting Ltd. (Respondents) v. Ontario Masonry Contractors Association (Intervener) *(Endorsed Settlement)*

2047-08-R: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Lakeside Electric Inc. and, Michael Brubacher c.o.b. as Lakeside Electric (2007) (Respondents) *(Endorsed Settlement)*

2214-08-R: International Union of Bricklayers and Allied Craft Workers, Local 6 (Applicant) v. Global Construction Ltd. also d.b.a. Global Brick, 1762623 Ontario Inc. o/a Global Brick and Stucco also d.b.a. Global Brick, Moe Chehab and, Eddie Kamal (Respondents) *(Granted)*

2280-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Sutherland-Schultz Inc. /Sutherland-Schultz Limited, Wilson & Somerville Limited (Respondents) *(Withdrawn)*

2801-08-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dragan Kalaba c.o.b. as Dancon Inc., Midland Commercial Enterprises Inc., 1404735 Ontario Inc. (Respondents) *(Granted)*

3372-08-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Burgess-Vibro Acoustics Limited, B.V.A. Systems Ltd. / Les Systemes B.V.A. Ltee. o/a Vibro-Acoustics (Respondents) *(Dismissed)*

3389-08-R: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Broneff Contractors Inc., Filimar Construction Ltd., Ontario Interior Systems Ltd., T & F Lathing Ltd., J.A.G. Stucco & Drywall Ltd. and, Davco Drywall Systems Inc. (Respondents) *(Granted)*

3499-08-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 27, Aluminum Pro Inc., CRO Aluminum Inc. (Respondents) *(Dismissed)*

3502-08-R: United Food & Commercial Workers Union, Local 175 (Applicant) v. Arroma Pizza and, B&B Roadhouse Bar and Grill (Respondents) *(Withdrawn)*

SALE OF A BUSINESS

2591-07-R; 2602-07-R: Brick and Allied Craft Union of Canada, Local 5 and International Union of Bricklayers and Allied Craftworkers, Local 5 (Applicant) v. Cruz Construction & Renovation Inc., Aliance Construction Group Inc., Aliance Masonry (2005) Ltd., Aliance Construction Ltd., Baden Masonry Inc. and, A & D Masonry Consulting Ltd. (Respondents) v. Masonry Industry Employers' Council of Ontario (Intervener); Labourers' International Union of North America, Local 1059 (Applicant) v. Cruz Construction & Renovation Inc., Aliance Construction Ltd., Aliance Construction Group Inc., Aliance Masonry (2005) Ltd., Baden Masonry Inc. and, A & D Masonry Consulting Ltd. (Respondents) v. Ontario Masonry Contractors Association (Intervener) *(Endorsed Settlement)*

2214-08-R: International Union of Bricklayers and Allied Craft Workers, Local 6 (Applicant) v. Global Construction Ltd. also d.b.a. Global Brick, 1762623 Ontario Inc. o/a Global Brick and Stucco also d.b.a. Global Brick, Moe Chehab and, Eddie Kamal (Respondents) *(Granted)*

2280-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Sutherland-Schultz Inc. /Sutherland-Schultz Limited, Wilson & Somerville Limited (Respondents) *(Withdrawn)*

2801-08-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dragan Kalaba c.o.b. as Dancon Inc., Midland Commercial Enterprises Inc., 1404735 Ontario Inc. (Respondents) *(Granted)*

3372-08-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Burgess-Vibro Acoustics Limited, B.V.A. Systems Ltd. / Les Systemes B.V.A. Ltee. o/a Vibro-Acoustics (Respondents) *(Dismissed)*

3389-08-R: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Broneff Contractors Inc., Filimar Construction Ltd., Ontario Interior Systems Ltd., T & F Lathing Ltd., J.A.G. Stucco & Drywall Ltd. and, Davco Drywall Systems Inc. (Respondents) *(Granted)*

3502-08-R: United Food & Commercial Workers Union, Local 175 (Applicant) v. Arroma Pizza and, B&B Roadhouse Bar and Grill (Respondents) *(Withdrawn)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

1368-08-R; 1532-08-R; 1533-08-R; 2362-08-R International Union of North America, Local 1059 and The Formwork Council of Ontario (Applicant) v. Central Ontario Regional Council of Carpenters Drywall and Allied Workers United Brotherhood of Carpenters and Joiners of America/Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, Carpenters Union Central Ontario Regional Council and, Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers Local 1946 (Respondents) v. Pace Enterprises (1998) Inc. (Intervener); Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America and, Labourers' International Union of North America, Ontario Provincial District Council and its affiliated Local Unions 183, 247, 493, 506, 527, 607, 625, 837, 1036, 1059, 1081 and 1089 (Respondents) v. Labourers' International Union of North America, Local 1059, Pace Enterprises (1998) Inc. (Interveners); Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Formwork Council of Ontario (Respondent) v. Labourers International Union of North America, Local 1059 (Intervener); The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America and, United Brotherhood of Carpenters and Joiners of America, Local 18 affiliated with Greater Ontario Regional Council of Carpenters, Drywall and Allied Employees Representing Members of Local Union 18 employed by Pace Enterprises (1998) Inc. (Applicants) v. The Formwork Council of Ontario (Respondent) v. Pace Enterprises (1998) Inc. (Intervener) *(Withdrawn)*

3284-08-R: Harris Skelliter on behalf of the Employees of Unimin Canada Ltd., Bagdley Island Operation Killarney, Ontario (Applicant) v. Cement, Lime, Gypsum & Allied Workers Division of International Brotherhood of Boilermakers, Iron Ship Builders, Black Smiths, Forgers & Helpers - Local 494 (Respondent) v. Unimin Canada Ltd. (Intervener) *(Granted)*

Unit: "all employees of the Bagdley Island Operation of Unimin Canada Ltd. in the Township of Killarney, Manitoulin District, and Province of Ontario." (27 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	19
Number of ballots segregated and not counted	0

3516-08-R: John MacLean, on his own behalf and on behalf of a group of employees of Canadian Corps of Commissionaires (Ottawa Division) (Applicant) v. Public Service Alliance of Canada (Respondent) v. Canadian Corps of Commissionaires (Ottawa Division) (Intervener) *(Granted)*

Unit: "all employees of the Canadian Corps of Commissionaires (Ottawa Division) in the City of Ottawa, at Health Canada facility, save and except Deputy Section Supervisors and persons above the rank of Deputy Section Supervisor and administrative office employees. Clarity Note: The unit comprises the employees who work at the locations specified in Section 13 of the contract between the Canadian Corps of Commissionaires (Ottawa Division) and the Treasury Board of Canada." (59 employees in unit)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	46

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	21
Number of ballots marked against respondent	25
Number of ballots segregated and not counted	0

3552-08-R: Dorie Brouwer (Applicant) v. Ontario Nurses Association (Respondent) v. Saint Elizabeth Health Care (Intervener) *(Granted)*

Unit: "all Registered Nurses and Graduate Nurses engaged in a nursing capacity of Saint Elizabeth Health Care - Durham Region in the Regional Municipality of Durham, save and except Program Managers, persons above the rank of Program Manager, Registered Practical Nurses and Graduate Practical Nurses, Home Support Staff, and office and clerical staff" (29 employees in unit) *(Clarity Note)*

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	9
Number of ballots segregated and not counted	0

3583-08-R: Medical Pharmacy Group Inc. (Applicant) v. Retail, Wholesale and Department Store Union (Respondent) *(Terminated)*

3615-08-R: Rajinder Singh (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 504 (Respondent) v. Narroflex Inc. (Intervener) *(Dismissed)*

3628-08-R: Ashley Anderson, Sue Longtin, Lesley Wayland (Applicant) v. Ontario Federation of Health Care Workers, L.I.U.N.A. Local 1110 (Respondent) v. Nova Vita Women's Shelter Inc. (Intervener)

Unit: "all employees employed by the Employer in the City of Brantford, save and except managers, persons above the rank of manager, office and clerical staff, fund-raisers, volunteer co-ordinators and students." (31 employees in unit) *(Dismissed)*

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	12
Number of ballots marked against respondent	14
Number of ballots segregated and not counted	1

3739-08-R: Aimee DeWitt (Applicant) v. UNITED HERE Ontario Council and its Local 2347 (Respondent) v. Comfort Inn HOCO Limited (Intervener) *(Dismissed)*

3751-08-R: Charlotte Hele & Laurie Black (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) *(Granted)*

3752-08-R: Ramandeep Gill (Applicant) v. National, Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) 504 (Respondent) v. Narroflex Inc. (Intervener) *(Granted)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2467-06-U: Marco Antunes (Applicant) v. Universal Workers Union, L.I.U.N.A. Local 183 (Respondent) v. Miwel Construction Limited (Intervener) *(Dismissed)*

3688-06-U: Karen Foley (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) *(Terminated)*

0582-07-U: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Goreski Roofing and Lathing Ltd. (Respondent) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener) *(Withdrawn)*

0652-07-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Scott Concrete Limited, John Scott and Howard Scott (Respondent) *(Withdrawn)*

1142-07-U: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. PPG Canada Inc., Liberty Staffing Services Inc. and, The Staffing Edge Inc. (Respondents) *(Dismissed)*

3349-07-U: Anthony Gironda (Applicant) v. Canadian Union of Public Employees and its Local 1280 (Respondent) v. Toronto Catholic District School Board (Intervener) *(Dismissed)*

3598-07-U: Allie Fawaz (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195 (Respondent) v. MAHLE Filter Systems Canada, ULC (Intervener) *(Dismissed)*

0156-08-U: United Brotherhood of Carpenters and Joiners of America, Local 249, Ken Hanna and Ghislain Laloux (Applicant) v. T. Wayne Lawson Construction Ltd. and Wayne Lawson (Respondent) *(Terminated)*

0292-08-U: Nancy Gulyas, Sylvia Johnson et al (Applicant) v. Ontario Public Service Employees Union (OPSEU) and its Local 380 (Respondent) v. Muskoka Algonquin Healthcare (Intervener) *(Terminated)*

0341-08-U: Raymond LaFrance and (Applicant) v. Drywall Acoustic Lathing and Insulation Local 675 United Brotherhoof of Carpenters and Joiners of America (Respondent) *(Dismissed)*

0669-08-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Applicant) v. Kraft Canada Inc. (Respondent) *(Withdrawn)*

0684-08-U: Canadian Union of Public Employees, Local 79 (Applicant) v. Board of Directors of Bridgepoint Hospital (Respondent) *(Withdrawn)*

1144-08-U: Leonardo G. Galuego (Applicant) v. Canadian Union of Public Employees and its Local 4599-01 (Respondent) v. Kensington Health Centre (Intervener) *(Dismissed)*

1266-08-U: Elzbieta Socha (Applicant) v. United Food and Commercial Workers, Local 206 (Respondent) v. Canadian Linen & Uniform Services (Intervener) *(Withdrawn)*

1347-08-U: Mark Volterman (Applicant) v. Directors Guild of Canada Ontario (Respondent) *(Dismissed)*

1357-08-U; 1534-08-U: Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers, Local 1946 (Applicant) v. Pace Enterprises (1998) Inc. and, Labourers' International Union of North America, Local 1059 (Respondents); Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pace Enterprises (1998) Inc., The Formwork Council of Ontario (Respondents) v. Labourers' International Union of North America, Local 1059 (Intervener) *(Withdrawn)*

1550-08-U: Peter James Boswell (Applicant) v. Kingston Independent Nylon Workers Union and Invista Canada Co. (Respondent) v. Invista (Canada) Company (Intervener) *(Dismissed)*

1672-08-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Formet Industries Division of Cosma International Inc. and/or Formet Industries Division of Magna International Inc. (Respondent) *(Withdrawn)*

1673-08-U: Frank Antohny Zonni (Applicant) v. Canadian Union Of Public Employees, Local 1750 (Respondent) *(Dismissed)*

1850-08-U: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. 1440842 Ontario Inc. o/a Kyiv Architectural Metals (Respondent) *(Withdrawn)*

1874-08-U: Linus Lefort (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Withdrawn)*

1887-08-U: Kathy Kemp (Applicant) v. UNITE HERE Ontario Council and UNITE HERE Local 153 (Respondent) *(Withdrawn)*

1962-08-U: Jennifer Pacitto (Applicant) v. Ross' No Frills (Respondent) *(Dismissed)*

1996-08-U: Clary Bijl, Eugenia Cocomile, representing a group of retired RPNs (Applicant) v. Canadian Union of Public Employees and its Local 145 (Respondent) v. William Osler Health Centre (Intervener) *(Dismissed)*

2081-08-U: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Aerostar Electrical Services Inc. (Respondent) *(Granted)*

2123-08-U: Construction Workers Union Local 150 affiliated with the Christian Labour Association of Canada (Applicant) v. Group 92 Mechanical Inc. (Respondent) *(Withdrawn)*

2141-08-U: Flora Villanueva (Applicant) v. SEIU LOCAL 1 (Respondent) *(Withdrawn)*

2193-08-U: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Stage West All-Suite Hotel and Theatre Restaurant (Respondent) *(Withdrawn)*

2232-08-U: Devry LeClair (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 880 (Respondent) *(Dismissed)*

2320-08-U; 3037-08-U: Teamsters Local Union No. 938 (Applicant) v. Brent Packaging & Logistics Ltd. (Respondent) *(Withdrawn)*

2327-08-U: Group 92 Mechanical Inc. (Applicant) v. Construction Workers Union Local 150 affiliated with the Christian Labour Association of Canada (Respondent) *(Withdrawn)*

2344-08-U: Service Employees International Union Local 1 Canada (Applicant) v. Riverdale Immigrant Women's Centre (Respondent) *(Withdrawn)*

2462-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Peter Esposito o/a A Plus Masonry (Respondent) *(Withdrawn)*

2530-08-U: Robert Naven (Applicant) v. CAW Local 707 (Respondent) *(Dismissed)*

2732-08-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Starsky Foods Inc. (Respondent) *(Withdrawn)*

2787-08-U; 2926-08-U: Communications, Energy and Paperworkers Union of Canada Local 87-M Southern Ontario Newsmedia Guild (Applicant) v. Osprey Media Publishing Inc. Sarnia Observer (Respondent) *(Withdrawn)*

2793-08-U: Natha Hayer (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW -Canada) and its Locals No. 200, 240, 584, 707, 1324 and 1520 ("national union") (Respondent) v. Ford Motor Company of Canada, Limited (Intervener) *(Dismissed)*

2929-08-U: Kevin Waddell (Applicant) v. Teamsters Local 880 (Respondent) v. Canada Building Materials Company (Intervener) *(Withdrawn)*

2967-08-U; 3003-08-U: David Donnelly, Ken Sproule, Jose Calero, Manuel Alvarado, Marcel Therrien, Kevin Bobbitt, Bruce Longley, Gildardo Mendoza, Steve Duvall, Franco Diamante and James Van Rossi (Applicant) v. CAW CANADA (Respondent) v. Mueller Canada Ltd. (Intervener); David Donnelly, Ken Sproule, Jose Calero, Manuel Alvarado, Marcel Therrien, Kevin Bobbitt, Bruce Longley, Gildardo Mendoza, Steve Duvall, Franco Diamante and James Van Rossi (Applicant) v. Canadian Auto Workers (CAW), Local 252 (Respondent) *(Withdrawn)*

3010-08-U: Glen Miller (Applicant) v. Independent Canadian Extrusion Workers' Union and (Respondent) v. CCL Container (Intervener) *(Withdrawn)*

3026-08-U: International Union of Operating Engineers, Local 793 (Applicant) v. James Elliott Underground Construction Inc. (Respondent) *(Withdrawn)*

3079-08-U: Dale Mounk (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 1-2693 (Respondent) *(Withdrawn)*

3160-08-U: Southwestern Ontario Health Care and Service Workers, Local 303, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. Fiddick's Nursing Home Limited (Respondent) *(Withdrawn)*

3196-08-U: Zaga Jovanovic (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Humber Institute of Technology and Advanced Learning (Intervener) *(Dismissed)*

3222-08-U: Canadian Union of Public Employees (Applicant) v. St. Peter's Residence at Chedoke (Respondent) *(Terminated)*

3230-08-U: Bonnie Holman (Applicant) v. Service Employees International Union (Respondent) v. Blenheim Community Village (Intervener) *(Withdrawn)*

3243-08-U: Douglas D. Kingma (Applicant) v. Township of South Frontenac (Respondent) *(Withdrawn)*

3298-08-U: International Union of Operating Engineers, Local 793 (Applicant) v. John Rintala Trucking (Respondent) *(Withdrawn)*

3347-08-U: Retail, Wholesale & Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Auto-Pak Ltd. o/a Benson Autoparts and/or Auto Parts Extra (Respondent) *(Withdrawn)*

3350-08-U: Richard J. Sheehan (Applicant) v. United Steelworkers Union Local #16506-53 (Respondent) *(Withdrawn)*

3381-08-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Husky Injection Molding Systems Ltd. (Respondent) *(Withdrawn)*

3496-08-U: Sheet Metal Workers' International Association, Local 51 (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 27, Aluminum Pro Inc., CRO Aluminum Inc. (Respondents) *(Withdrawn)*

3517-08-U: Raymond Palmer (Applicant) v. Amalgamated Transit Union Local 1415 (Respondent) *(Withdrawn)*

3621-08-U: International Union of Operating Engineers, Local 793 (Applicant) v. JBL Construction, (A Division of 1644472 Ontario Limited) (Respondent) *(Granted)*

3623-08-U: Orlando Prescod (Applicant) v. United Steelworkers of America, Local 7135 (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

2992-07-M: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Elite Construction Inc. and/or Andiel Homes Inc. (Respondent) *(Withdrawn)*

3348-08-M: Retail, Wholesale & Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Auto-Pak Ltd. o/a Benson Autoparts and/or Auto Parts Extra (Respondent) *(Withdrawn)*

3431-08-M: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Husky Injection Molding Systems Ltd. (Respondent) *(Withdrawn)*

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

3293-08-M: Metro Ontario Inc., Ottawa Grocery Distribution Centers, Ottawa Produce Distribution Centers, Ottawa Maintenance Mechanics (Applicant) v. Teamsters Local Union 91 (Respondent) *(Terminated)*

JURISDICTIONAL DISPUTES

1359-08-JD; 1402-08-JD; 2076-08-JD: Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers, Local 1946 (Applicant) v. Pace Enterprises (1998) Inc. and, Labourers' International Union of North America, Local 1059 (Respondents); 2076-08-JD: Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers, Local 18 (Applicant) v. Pace Enterprises (1998) Inc.;, Labourers' International Union of North America, Ontario Provincial District Council;, Labourers' International Union of North America, Local 837; and, Formwork Council of Ontario (Respondents) *(Withdrawn)*

1609-08-JD; 1611-08-JD: International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Safeguards Technology LLC, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Respondents) *(Withdrawn)*

1650-08-JD: International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Alberici Constructors Ltd., International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Respondents) *(Withdrawn)*

1973-08-JD: Insultek (Sarnia) Inc. (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 1256 and, International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Respondents) *(Dismissed)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

1238-08-M: Milton Public Library Board (Applicant) v. Canadian Union of Public Employees and its Local 4366 (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

1073-08-OH: Douglas Foreman (Applicant) v. Stein Industries Inc. (Respondent) *(Withdrawn)*

2917-08-OH: Ontario Secondary School Teachers' Federation, and its District 4 and Elizabeth Gribbon (Applicant) v. Near North District School Board (Respondent) *(Withdrawn)*

3138-08-OH: Kyle Davis (Applicant) v. Ministry of Community Safety and Correctional Services, TWDC (Respondent) *(Withdrawn)*

3139-08-OH: Matthew M. Duffy (Applicant) v. Ministry of Community Safety and Correctional Services, TWDC (Respondent) *(Withdrawn)*

3179-08-OH: Andrew Pollock, Danny Dosanjh, Mark Rohne, Matthew Duffy, Mark Kim, Kyle Davis, Mike Schutz, Dan MacCallum, Kim Lengert, Lyndon Ricketts, Joel Filoteo, Hector Marini, Trevor Dunscombe, Kristiaan Zandwyk-De Haas, Mark MacDonald, Anthony Veith, Lawrence Agustin, Cassandra Dupuis, Cindy Perry, Harminder Singh, Greg Dewit, Paul Fagon, Vito Binetti, Deborah Cottier, Derron Cottier, Melissa Bent, Scott Bartlett, Colin McMahon, Catherine Romans, Mark Hegney, Joe Filippelli, Marlene Wickham-Johnson, Derek Enros, Kaskim Levy, Sean MacCormack, Sandeep Randhawa, Lance Bobb, Emmanuel Allotey, Carlos Mauriera, Anil Purohit, Candice McLeod, Connie Iscaro, Steve McDonald, Rita Brunet, John Chandra, John Lotfi, David Goba, Joshua Baker, John Feeney (Applicant) v. Ministry of Community Safety and Correctional Services Paul Greer, Superintendent TWDC (Respondent) *(Withdrawn)*

3180-08-OH: Stanley Parulski, P. Hogg, Prince Selvaraj, Greg Polanski, Eric Mulders, Michael Brooks, Dana Gaudet, Kulvr Saini, Colin Watson, John Moore, Jim Kellock, Al Craig, Joanne Skingsley, Frank Stellato, Allan Barclay, Mike Klement, Sukpreet Gidda, Leon Watson (Applicant) v. Ministry of Community Safety and Correctional Service Paul Greer, Superintendent TWDC (Respondent) *(Withdrawn)*

3181-08-OH: Thomas Balazs (Applicant) v. Ministry of Community Safety and Correctional Service Paul Greer, Superintendent TWDC (Respondent) *(Withdrawn)*

3182-08-OH: Monte Vieselmeyer (Applicant) v. Ministry of Community Safety and Correctional Services Paul Greer, Superintendent TWDC (Respondent) *(Withdrawn)*

3207-08-OH: Reid Donavan Kotilehti (Applicant) v. Paton Cartage (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

2005-07-G: Brick and Allied Craft Union of Canada, Local 31 and International Union of Brick and Allied Craftworkers, Local 31 (Applicant) v. Heritage Tiling Ltd. (Respondent) *(Withdrawn)*

2391-07-G: United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Brier Drywall Inc. (Respondent) *(Withdrawn)*

3196-07-G; 1375-08-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. O. Ciccarelli & Sons Contracting Ltd. (Respondent); Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. O. Ciccarelli & Sons Contracting Ltd./ Ottavio Ciccarelli & Sons Contracting Ltd. (Respondent) *(Withdrawn)*

0121-08-G: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Finn Drywall Ltd. (Respondent) *(Withdrawn)*

1651-08-G: International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Alberici Constructors Ltd. (Respondent) *(Withdrawn)*

2046-08-G: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Michael Brubacher c.o.b. as Lakeside Electric (2007) (Respondent) *(Endorsed Settlement)*

2503-08-G; 3429-08-G: Carpenters' Union, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America (Applicant) v. Embee Properties Limited (Respondent) *(Withdrawn)*

2506-08-G: Carpenters' Union, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America (Applicant) v. Embee Properties Limited (Respondent) *(Withdrawn)*

2548-08-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Detail Plumbing Corp. (Respondent) *(Granted)*

2782-08-G: Brick and Allied Craft Union of Canada and Brick and Allied Craft Union of Canada, Local 31 (Applicant) v. Empire Stone Inc. (Respondent) *(Granted)*

3016-08-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Yustin Interiors Ltd. (Respondent) *(Endorsed Settlement)*

3195-08-G: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Pace Enterprises (1998) Inc. and Edward D. Pace (Director) (Respondent) *(Granted)*

3211-08-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Hydro One Inc./Hydro One Networks Inc. (Respondent) *(Withdrawn)*

3213-08-G: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. J.A.G. Stucco & Drywall Ltd. (Respondent) *(Withdrawn)*

3220-08-G; 3368-08-G: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yukon Construction Inc. (Respondent) *(Granted)*

3237-08-G: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. BJS Electric Ltd. (Respondent) *(Endorsed Settlement)*

3239-08-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as

"Carpenters Local Unions participating in the OPC Trust Funds") (Applicant) v. Rene's Renovations and Decorating Ltd. (Respondent) *(Granted)*

3297-08-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Applicant) v. 2095013 Ontario Limited c.o.b. as MPG Mechanical (Respondent) *(Granted)*

3392-08-G: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Davco Drywall Systems Inc. (Respondent) *(Withdrawn)*

3396-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Riverton Forming Inc. (Respondent) *(Granted)*

3398-08-G: Brick and Allied Craft Union Local 4 on its own behalf and on behalf of the Trustees of BACU Local 4 Benefit Trust Fund and The Provincial CMPT Pension Trust Fund (Applicant) v. 1448069 Ontario Inc. c.o.b. as Ontario Masonry & Concrete, Ontario Masonry & Concrete, a General Partnership, Rocco Strazzella, Linda Strazzella (Respondent) *(Dismissed)*

3399-08-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Benforest Developments Inc. (Respondent) *(Granted)*

3403-08-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Cap Concrete Structures Ltd. (Respondent) *(Endorsed Settlement)*

3422-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. D. Gambini Carpenters Ltd. (Respondent) *(Granted)*

3425-08-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Ducan Ceiling & Walls Systems of Oshawa Limited (Respondent) *(Granted)*

3434-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yukon Construction Inc. and, Oreste Perruzza (Respondents) *(Granted)*

3445-08-G: Labourers' International Union of North America, Local 1036 (Applicant) v. George Stone & Sons Ltd. (Respondent) *(Withdrawn)*

3450-08-G; 3452-08-G; 3453-08-G: International Brotherhood of Electrical Workers, Local 353 Applicant) v. Panson Electrical Services Ltd. (Respondent) *(Endorsed Settlement)*

3481-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Discovery Electric Ontario Limited (Respondent) *(Withdrawn)*

3482-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Plan Electric Co. (Respondent) *(Withdrawn)*

3513-08-G: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. 1518049 Ontario Limited o/a Polar Painting & Decorating (Respondent) *(Granted)*

3520-08-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Louis Jones Construction Ltd. (Respondent) *(Endorsed Settlement)*

3542-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. 1257132 Ontario Ltd. o/a PM Designs (Respondent) *(Granted)*

3559-08-G; 3560-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Edge Electric Ltd. (Respondent) *(Endorsed Settlement)*

3582-08-G: The International Union of Painters and Allied Trades, Local 1819 (Applicant) v. 1660720 Ontario Inc. o/a Basic Structure Engineering & Glazing (Respondent) *(Granted)*

3610-08-G: International Brotherhood Of Electrical Workers, Local 353 (Applicant) v. Unitech Electric Ltd. (Respondent) *(Terminated)*

3616-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. Extreme Drilling Inc. (Respondent) *(Granted)*

3634-08-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. The West Engineering Company Ltd. (Respondent) *(Granted)*

3636-08-G: Labourers' International Union of North America, Local 837 (Applicant) v. King Forming Limited (Respondent) *(Withdrawn)*

3655-08-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 741030 Ontario Inc. c.o.b. as Narles Contracting (Respondent) *(Terminated)*

APPEALS - EMPLOYMENT STANDARDS ACT

3043-03-ES: Chandar Hans (Applicant) v. 974237 Ontario Limited o/a Casa Blanca Motel, Director of Employment Standards (Respondents) *(Terminated)*

4241-03-ES: Gary Councillor (Applicant) v. Kish Gon Dug Canada Inc., Director of Employment Standards (Respondents) *(Terminated)*

0002-04-ES: Paul Brecheuhler (Applicant) v. Best Buy Canada, Director of Employment Standards (Respondents) *(Terminated)*

3184-04-ES: Alexandra Crighton (Applicant) v. Pubwells Restaurant, Director of Employment Standards (Respondents) *(Terminated)*

3485-04-ES: Michel Lavoie (Applicant) v. Kirkland Lake Gold Inc., Director of Employment Standards (Respondents) *(Terminated)*

3556-04-ES: Sylvain Vachon (Applicant) v. Kirkland Lake Gold Inc., Directeur des norms d'emploi (Respondents) *(Terminated)*

3676-04-ES: Charles William Callaghan (Applicant) v. Lighthouse 54 and, Director of Employment Standards (Respondents) *(Terminated)*

3677-04-ES: Charles William Callaghan (Applicant) v. Mid-Town and Travellers Motor Hotels and, Director of Employment Standards (Respondents) *(Terminated)*

3843-04-ES: Terrence Miriguay (Applicant) v. Ottawa Towing Service and, Director of Employment Standards (Respondents) *(Terminated)*

0829-05-ES: Ariane Demers (Applicant) v. Le Centre Alpha-culturel de Sudbury, Directeur des normes d'emploi (Respondents) *(Terminated)*

1456-05-ES: Brigette Manning, a Director of 1366883 Ontario Limited o/a Beresford Clinic (Applicant) v. Deborah M. Smallman, Sheila D. McCallum and, Director of Employment Standards (Respondents) *(Terminated)*

1571-05-ES: Margaret Ma a Director of 838645 Ontario Inc. o/a Windsor Mazda (Applicant) v. Brian Leclaire and, Director of Employment Standards (Respondents) *(Terminated)*

2318-05-ES: Abe Reimer (Applicant) v. McBride Metal Fabricating Corporation Amerimark Division, Director of Employment Standards (Respondents) *(Terminated)*

2534-05-ES: Natasha Patterson (Applicant) v. Almugniyo Canada Inc. o/a Amici's Market Place, Director of Employment Standards (Respondents) *(Terminated)*

2572-05-ES: Lori Ivicic (Applicant) v. 1389715 Ontario Inc. o/a Elixir Lounge and, Director of Employment Standards (Respondents) *(Terminated)*

3454-05-ES: Davinder Gahunia (Applicant) v. Cases Unlimited Inc., Director of Employment Standards (Respondents) *(Terminated)*

3576-05-ES: Angele Chartrand (Applicant) v. Vista Sudbury Hotel Inc. o/a Radisson Hotel Sudbury and, Director of Employment Standards (Respondents) *(Terminated)*

3909-05-ES: Karen McDonald a Director of Nami Creative Designs Ltd. (Applicant) v. Elise Kivimaki and, Director of Employment Standards (Respondents) *(Terminated)*

1364-06-ES: Southbridge Investment Partnership No. 3, Vital GP Inc. (Applicants) v. Tanya Glenn-Cooke, Director of Employment Standards (Respondents) *(Dismissed)*

3059-06-ES: Sang-Ho Kim a Director of Edgetech Services Inc. (Applicant) v. Hassan Abbasi, Director of Employment Standards (Respondents) *(Terminated)*

3624-06-ES: Wanda Srdoc, a Director of Best Dressed Pets Inc. (Applicant) v. Andrea Mendonca and, Director of Employment Standards (Respondents) *(Terminated)*

4080-06-ES: Dr. Gabriel Pulido-Cejudo, Director of Canbreal Therodiagnostics International Inc. (Applicant) v. Roxanne Bergeron, Corinne McCarthy and, Director of Employment Standards (Respondents) *(Terminated)*

2136-07-ES: Carol Fey (Applicant) v. Medix School Inc. and, Director of Employment Standards (Respondents) *(Terminated)*

2316-07-ES: Daniel Blundon (Applicant) v. Office Equipment Specialists Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2680-07-ES; 3032-07-ES: Peter Paras, a Director of Ram Forged Products Inc. (Applicant) v. Ted Baiano and, Director of Employment Standards (Respondents); Sam Mingle, a Director of Ram Forged Products Inc. (Applicant) v. Alfred (Ted) Baiano and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2684-07-ES: Steven Lawrence (Applicant) v. Startek Canada Services Ltd. and, Director of Employment Standards (Respondents) *(Dismissed)*

2847-07-ES: Gary Filippini and John Quarrie, Directors of Infractech Metal Systems Inc. (Applicant) v. Wayne Gardiner, Paul Rummell, David Gonsalves, Mike Patterson, Trevor Streets, Don Mitchell, Steven King, Jehangir

Khan, Mandeep Singh Johal, Michael Frith, Joe Couto, Director of Employment Standards, Josh Olynyk, Stuart Lewis, Jeff Roth (Respondents) *(Endorsed Settlement)*

3703-07-ES: One Stop Automotive (Applicant) v. Mathieu D. Jolicoeur and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0624-08-ES: Lindsay Shangraw (Applicant) v. 2104882 Ontario Inc. o/a Diamond Grill and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0704-08-ES: Gazeta Inc. (Applicant) v. Magdalenz Kubik and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0731-08-ES: Canadian Aesthetic Academy Inc. (Applicant) v. Geeta Chadha and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1510-08-ES: Campbell Company of Canada/Compagnie Campbell du Canada (Applicant) v. Lynn Yull, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1535-08-ES: Hilda Irene Cupeta (Applicant) v. Youth in Motion Education Foundation, and, Director of Employment Standards (Respondents) *(Granted)*

1757-08-ES: Bao Thi Tran (Applicant) v. Mouldex Exterior Mouldings Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1789-08-ES: Yulian He (Applicant) v. Flextronics Global Services Canada Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1822-08-ES: Sandra M. Davis (Applicant) v. Veritas Tools Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

1833-08-ES: Michael Iaquinto (Applicant) v. 1028918 Ontario Inc. o/a Burlington Toyota (1993) Inc., and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1856-08-ES: Fred Collette (Applicant) v. National Waste Services Inc. and, Erie Personnel Corporation and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1956-08-ES: Markinch Capital Corp. and Markinch Realty Corporation (Applicant) v. Anil Patel and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2071-08-ES: Architectural Metalcraft Industries Limited (Applicant) v. Justo Echaverry and, Director of Employment Standards (Respondents) *(Dismissed)*

2089-08-ES: Traffic Ticket Toronto (Applicant) v. Jamana Tjin-Fooh and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2115-08-ES: Kamala Kirushna (Applicant) v. Ombudsman Ontario and, Director of Employment Standards (Respondents) *(Withdrawn)*

2262-08-ES: 49ST Events Corp. (Applicant) v. Lindsay Girodat and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2276-08-ES: Angel P. Sanchez Lozano (Applicant) v. 576195 Ontario Limited o/a C.I.C.C. Wiseman Export and, Director of Employment Standards (Respondents) *(Granted)*

2294-08-ES: Myron Young (Applicant) v. The Backyard Pool and Spa Company Ltd. and, Director of Employment Standards (Respondents) *(Dismissed)*

2297-08-ES: Paul Seibert (Applicant) v. Xerox Canada Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2308-08-ES: Brent Udell & M. Jukes-Hughes director of Pinnacle Roofing Systems Inc. (Applicant) v. William George Thompson, Director of Employment Standards (Respondents) *(Dismissed)*

2501-08-ES: Shamsher Singh (Applicant) v. Amjit Trucking Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2577-08-ES: Blaine Gallienne (Applicant) v. Mittal Canada Hamilton Inc. and, Director of Employment Standards (Respondents) *(Withdrawn)*

2588-08-ES: Guelph Tool Inc. (Applicant) v. Anthony Bruzzese and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2643-08-ES: Sun Printing House Limited (Applicant) v. Robert Murdoch and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2738-08-ES: Michelle Stewart (Applicant) v. The Credit Valley Hospital and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2768-08-ES: Momentum Fitness Corp. (Applicant) v. Christina Chiappetta, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2769-08-ES: Momentum Fitness Corp. (Applicant) v. Rachelle Black, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2824-08-ES: Qing Xiang Lu (Applicant) v. J & T Machine Knife Inc., and, Director of Employment Standards (Respondents) *(Withdrawn)*

2825-08-ES: Robert Petrevski, a Director of 1679712 Ontario Inc (Applicant) v. Shirley Steenhuis and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2856-08-ES: TDM Drugs Inc. (Applicant) v. Eve Yantha and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2881-08-ES: A.M. Pharmacare Limited (o/a Shoppers Drug Mart) (Applicant) v. Buulinh (Paulynn) Dang, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2974-08-ES: Priszm Inc. (Applicant) v. Giti Sedighi and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2976-08-ES: 1746334 Ontario Ltd. Operating As The Black Sheep Pub (Applicant) v. Ms. Megan Chorney and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2978-08-ES: Craig Martin (Applicant) v. Milano Foods and Biscuits Limited and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2986-08-ES: Gray Insurance Brokers Inc. (Applicant) v. Melissa Stubbs and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2994-08-ES: Payless Shoesource Canada Inc. (Applicant) v. Terry Thomas (Now Terry Emptage) and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3120-08-ES: Mingay & Vereshchak (Applicant) v. Tracy Schevers and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3154-08-ES: Nelson Araujo (Applicant) v. Andorra Building Maintenance Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3183-08-ES: Thomas R. (Rick) Lance (Applicant) v. Steven Flynn, Director of Employment Standards (Respondents) *(Dismissed)*

3204-08-ES: Antonina Kivelia (Applicant) v. Stahle Construction Inc., and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3205-08-ES: Virginia Robin Mayo (Smith) (Applicant) v. Cequent Towing Products and, Director of Employment Standards (Respondents) *(Withdrawn)*

3206-08-ES: Nucomm Marketing Inc. o/a Nucomm International aka Transcom North America (Applicant) v. Ken Plumsteel and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3245-08-ES: Ultra Manufacturing Limited/ Mitchell Plastics Ltd. (Applicant) v. Mr. Zuhair Marwda, Director of Employment Standards (Respondents); *(Endorsed Settlement)*

3295-08-ES; 3337-08-ES: Kathleen Matechuk (Applicant) v. Ontario Lottery and Gaming Corporation o/a Thousand Island Casino and, Director of Employment Standards (Respondents); Ontario Lottery and Gaming Corporation o/a Thousand Island Casino and (Applicant) v. Kathleen Matechuk and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3302-08-ES: Tony Sgambelluri (Applicant) v. J.F. Tire Service Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

3310-08-ES; 3315-08-ES; 3316-08-ES; 3317-08-ES: Elbow Swamp Sports Bar & Grill (Applicant) v. Holly Garrard, and, Director of Employment Standards (Respondents); Elbow Swamp Sports Bar & Grill (Applicant) v. Lindsey Gasperetti, and, Director of Employment Standards (Respondents); Elbow Swamp Sports Bar & Grill (Applicant) v. Roxanne Stuart, and, Director of Employment Standards (Respondents); Elbow Swamp Sports Bar & Grill (Applicant) v. Elizabeth Vandermarel, and, Director of Employment Standards (Respondents) *(Terminated)*

3321-08-ES: A & S Pizza Ltd. o/a Domino's Pizza (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

3322-08-ES: Donovan Aldrish (Applicant) v. Rosa's Construction, and, Director of Employment Standards (Respondents) *(Dismissed)*

3358-08-ES: Angela Figliomeni (Applicant) v. May Legaspi and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3371-08-ES: John Ruffolo (Applicant) v. HD Supply Canada Inc. o/a Brafasco and, Director of Employment Standards (Respondents) *(Dismissed)*

3373-08-ES: BTF Canada Corporation, Bally Total Fitness Corporation (Applicant) v. Elizabeth Mensah and, Director of Employment Standards (Respondents) *(Dismissed)*

3388-08-ES: 1395674 Ontario Inc. c.o.b. The Durham Corporate Centre (Applicant) v. Ms. Bobbie Preciado, Director of Employment Standards (Respondents) *(Dismissed)*

3418-08-ES: Mid-Nite Truck and Trailer Services Inc. (Applicant) v. Mario Adamek and, Director of Employment Standards (Respondents) *(Dismissed)*

3458-08-ES: Mr. Case Inc. (Applicant) v. Randy Labinjo and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3468-08-ES: Mark Russell (Applicant) v. Monique Campeau and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3469-08-ES: Mark Russell (Applicant) v. Mary-Jane Beuglet and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3475-08-ES: Wolfgang Miketa (Applicant) v. Star Group International and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3491-08-ES: Zaven Enterprises Ltd. (Applicant) v. Sara Timm and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3578-08-ES: Rick Smith (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1048-07-HS; 0255-08-HS: Blue Mountain Resorts Limited (Applicant) v. Richard den Bok, Inspector (Respondent) *(Dismissed)*

1218-07-HS: Zeljko Nesovic (Applicant) v. Ministry of Community Safety and Correctional Services, Toronto Jail, Rick Richmond, Inspector (Respondents) *(Withdrawn)*

2417-08-HS: Greater Essex County District School Board (Applicant) v. Ontario Secondary School Teachers' Federation District 9, Canadian Union of Public Employees Local 27, Canadian Union of Public Employees Local 1348 and, Chris Vasey, Inspector (Respondents) *(Withdrawn)*

3367-08-HS: Purity Life Health Products, a Division of SunOpta Inc. (Applicant) v. Price Teeter, Inspector (Respondent) *(Dismissed)*

3393-08-HS: Tinnerman Palnut Engineered Products Canada Corporation (Applicant) v. United Steelworkers and, Peter Coutlee, Inspector (Respondents) *(Dismissed)*

3477-08-HS: Breck Scaffold Solutions (Ontario) (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Roger F. Jeffreys, Inspector (Respondents) *(Dismissed)*

COMPLAINTS UNDER THE SMOKING IN THE WORKPLACE ACT

1997-08-M: Steven McClinchey (Applicant) v. Research In Motion Ltd. (Respondent) *(Withdrawn)*

PAY EQUITY ACT

3526-06-PE: Ontario Public Service Employees Union and its Local 500 (Applicant) v. Centre for Addiction & Mental Health (CAM-H) (Respondent) *(Withdrawn)*

0803-07-PE: Brandi Antoniak (Applicant) v. Haydon Youth Services, Pay Equity Commission (Respondents) *(Withdrawn)*

2272-07-PE; 2626-07-PE: Pay Equity Commission (Applicant) v. Adeptron Technologies Corporation (Respondent) *(Withdrawn)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

2505-08-PS: St. Joseph's Continuing Care Centre (Applicant) v. Hôpital Régional de Sudbury Regional Hospital, Canadian Union of Public Employees, Ontario Nurses' Association (Respondents) *(Endorsed Settlement)*

REFERRAL FROM MINISTER (SECTION 115)

3083-08-M: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1917 (Applicant) v. Guelph Products Collins & Aikman (Respondent) *(Granted)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2681-06-ES: Lorraine Condie (Applicant) v. Dorit Mazor and Danny Mazor o/a Universal Marketing and Director of Employment Standards (Respondents) *(Granted)*

0125-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 2095527 Ontario Limited c.o.b. as Embassy Suites (Respondent) *(Dismissed)*

0728-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. D. M. Hopper Electric Inc. (Respondent) *(Granted)*

1446-08-R; 1447-08-R; 1448-08-U; 1449-08-U: Brick and Allied Craft Union of Canada (Applicant) v. Riverstone Masonry Inc. (Respondent) v. Trevor Lockyer, Derrick Van Den Berg, Nelson Gower, Jamie Rutter, J. Bruce Barclay, Jason Veldman and Mark Kleyn (Intervener); Labourers' International Union of North America, Local 1059 (Applicant) v. Riverstone Masonry Inc. (Respondent) v. Brandon Rodwell, Justin Vanhevel, Shawn Norrie, Joe Yeoman, Justin McKay, Brady Becker and Joshua DeGraaf (Intervener); Labourers' International Union of North America, Local 1059 (Applicant) v. Riverstone Masonry Inc. (Respondent); Brick and Allied Craft Union of Canada (Applicant) v. Riverstone Masonry Inc.
(Respondent) *(Dismissed)*

2051-08-ES; 2381-08-ES: Dengru Wu (Applicant) v. The Corporation of the City of Cambridge (Respondent) *(Dismissed)*

2558-08-ES: Thornbury Grandview Farms Sales Ltd. (Applicant) v. Kenneth Church ar , Director of Employment Standards (Respondents) *(Dismissed)*

2564-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Avcon Construction Inc. (Respondent) *(Withdrawn)*

3054-08-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Rage Design Inc. (Respondent) *(Dismissed)*

Ontario Labour Relations Board,
505 University Avenue,
Toronto, Ontario
M5G 2P1

ISSN 0383-4778